Office-Supreme Court, U.S.
FILED
JUL 16 1984
ALEXANDER L. STEVAS,
CLERK

No. 83-2052

In The
Supreme Court of the United States
October Term, 1983

HANOCH TEL-OREN, in his capacity as father, on behalf of the deceased, IMRY TEL-OREN, *et al.*,

Petitioners,

v.

LIBYAN ARAB REPUBLIC, *et al.*,

Respondents.

HANOCH TEL-OREN, *et al.*,

Petitioners,

v.

LIBYAN ARAB REPUBLIC, *et al.*,

Respondents.

APPENDIX TO BRIEF IN OPPOSITION FOR RESPONDENT NATIONAL ASSOCIATION OF ARAB AMERICANS

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July 1984

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APPENDIX A

Complaint of Hanoch Tel-Oren *et al.* filed with
United States District Court
for the
District of Columbia

[List of Parties Omitted]

COMPLAINT FOR THE INTENTIONAL TORTS OF ASSAULT, BATTERY, FALSE IMPRISONMENT, INFLICTION OF MENTAL DISTRESS, AND INFLICTION OF CRUEL, INHUMAN AND DEGRADING TREATMENT; TORTIOUS ACTIONS IN VIOLATION OF THE LAW OF NATIONS; TORTIOUS ACTIONS IN VIOLATION OF THE TREATIES OF THE UNITED STATES; TORTIOUS ACTIONS IN VIOLATION OF THE LAWS OF THE UNITED STATES; CONSPIRACY TO COMMIT INTENTIONAL TORTS; CONSPIRACY TO COMMIT TORTS IN VIOLATION OF THE LAW OF NATIONS; CONSPIRACY TO COMMIT TORTS IN VIOLATION OF THE TREATIES OF THE UNITED STATES; AND CONSPIRACY TO COMMIT TORTS IN VIOLATION OF THE LAWS OF THE UNITED STATES

COME NOW the several plaintiffs, many through guardians and next friends, and hereby allege against the defendants Libyan Arab Republic, Palestine Liberation Organization, Palestine Information Office, National Association of Arab Americans and Palestine Congress of North America as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the causes of action delineated herein pursuant to 28 U.S.C. Section 1331

(Federal question arising under the laws and treaties of the United States), 28 U.S.C. Section 1332 (Diversity of Citizenship), 28 U.S.C. Section 1350 (Alien's action for tort-providing (sic) for original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States) and the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. Sections 1330, 1602-1611 (1976).

2. The District of Columbia is the proper venue in which to litigate the causes of action delineated herein. Acts in furtherance of the atrocities committed against the plaintiffs were perpetuated in the District of Columbia. Acts in furtherance of the conspiracies to commit atrocities against the plaintiffs, to violate the laws of the United States, to violate treaties of the United States and to violate the law of nations were performed in the District of Columbia. The District of Columbia is the seat of the foreign relations of the United States with foreign states, including the Libyan Arab Republic (hereinafter referred to as Libya). The District of Columbia is the center of the diplomatic activities of Libya with the United States. The District of Columbia is the center of the propoganda, (sic) lobbying and fund raising activities of Libya and the Palestine Liberation Organization (hereinafter referred to as the PLO) within the United States. Palestine Information Office, National Association of Arab Americans and Palestine Congress of North America have their headquarters in the District of Columbia, and their propaganda, lobbying and fund raising activities on behalf of Libya and the PLO are centered in the District of Columbia. Any federal district court is a proper venue in which to bring a claim arising pursuant to 28 U.S.C. Section 1350. The plaintiffs

have no other forum in which to receive redress of their grievances against the defendants.

3. The tortious acts committed against the plaintiffs are not of a political nature but instead are universally recognized as international crimes against mankind. Such acts are not within any protection given to sovereignty of a foreign state.

II. PLAINTIFFS

4. Hanoch Tel-Oren is a fifty-seven year old male, born in Pine Bluff, Arkansas, and is a citizen of the United States. He was the father of Imry Tel-Oren (age fifteen), who was killed in this incident. Prior to this incident, Hanoch Tel-Oren was a violinist with the Israeli Symphony Orchestra. Sharona Tel-Oren is a fifty year old female, born in Cleveland, Ohio, and is a citizen of the United States. She is the wife of Hanoch Tel-Oren. Prior to this incident, she was a flutist with the Israeli Symphony Orchestra. Adiel Tel-Oren is a twenty year old male, born in Israel, and is a citizen of the United States. Reviva Tel-Oren is a fifteen year old female, born in Israel, and is a citizen of the United States. Corenet Tel-Oren is a fifteen year old female, born in Israel, and is a citizen of the United States. Nir Tel-Oren is a twenty-three year old male, born in Israel, and is a citizen of the United States. Adiel, Reviva, Corenet and Nir Tel-Oren are the children of Hanoch and Sharona Tel-Oren. The remaining members of the family presently reside in Beersheba, Israel.

5. Joseph Hochman is a thirty-three year old male, born in Israel, and is a citizen of Israel. He was the husband of Rebecca Hochman (age twenty-eight), who was

killed in this incident. He was the father of Ilan Hochman (age three) and Roy Hochman (age seven), who were likewise killed in this incident. Prior to this incident, Joseph Hochman was employed as a bus driver with Egged Corporation. He presently resides in Neve-yam, Israel.

6. Monique Enekave is a thirty-nine year old female, born in Morocco, and is a citizen of Israel. She was the wife of Chaviv Enekave (age thirty-eight), who was killed in this incident, and the mother of Isaac Enekave (age ten) and Galit Enekave (age three) who were likewise killed in this incident. Tal Enekave is a ten year old female, born in Israel, and is a citizen of Israel. She is the daughter of Monique Enekave. Anat Enekave is a fourteen year old female, born in Israel, and is a citizen of Israel. She is the daughter of Monique Enekave. The remaining members of the family presently reside in Haifa, Israel.

7. Adina Haloune is a sixty-eight year old retired female, born in Syria, and is a citizen of Israel. She was the wife of Joseph Haloune (age sixty-eight), who was killed in this incident. Adina Haloune presently resides in Haifa, Israel.

8. Tamar Elefand is a thirty year old female, born in Poland, and is a citizen of Israel. She was the wife of Isaac Elefand (age forty-five), who was killed in this incident, and was the mother of Erez Elefand (age six), who was likewise killed in this incident. Prior to this incident, Tamar Elefand was employed as a nurse in hospital. Ronit Elefand is a six year old female, born in Israel, and is a citizen of Israel. She is the daughter of and the sole surviving child of Tamar Elefand. The re-

maining members of the family presently reside in Haifa, Israel.

9. Maya Susinsky Schur is a twenty-four year old married female, born in the Soviet Union, and is a citizen of Israel. She was the daughter of Joseph Susinsky (age fifty-seven) and Rena Katia Susinsky (age fifty), who were killed in this incident. Prior to the incident, Maya Susinsky Schur was employed as a secretary for an insurance company. She is presently residing in Bitsaron, Israel.

10. Moshe Alagim is a twenty-seven year old single male, born in Israel, and is a citizen of Israel. He is an architect and is presently residing in Tel Aviv.

11. Eliezer Kroytatro is a fifty-nine year old widower, born in Rumania, and is a citizen of Israel. He is a merchant and presently resides in Haifa, Israel.

12. Isaac Amir is a twenty year old married male, born in Morocco, and is a citizen of Israel. Prior to the incident, he was a police officer of lieutenant rank. Isaac Amir and his family (wife and three children) presently reside in Herzlia, Israel.

13. Ettei Sacherbrot is a sixty year old widowed female, born in Hungary, and is a citizen of Israel. She is a survivor of the Nazi concentration camps in Hungary. Ettel Sacherbrot presently resides in Haifa, Israel.

14. Isaac Mishkal is a thirty-three year old male, born in Israel, and is a citizen of Israel. Prior to this incident, he was employed as a bus driver with Egged Corporation. He was the father of Yoav Mishkal (age seven), who was killed in this incident. Rachel Mishkal

is a thirty year old female, born in Israel, and is a citizen of Israel. She is the wife of Isaac Mishkal. Prior to this incident, she was employed as a bank teller. Ruth Mishkal is a six year old female, born in Israel, and is a citizen of Israel. She is the daughter of, and the sole surviving child of Isaac and Ruth Mishkal. The remaining members of the family presently reside in Haifa, Israel

15. Joseph Hadany is a forty-one year old male, born in Israel, and is a citizen of Israel. He was the father of Naama Hadany (age five), who was killed in this incident. Prior to this incident, he was employed as a bus driver with Egged Corporation. Levana Hadany is a forty-two year old female, born in Israel, and is a citizen of Israel. She is the wife of Joseph Hadany. Prior to this incident, she was employed as a physical therapist. Ayelet Hadany is a twelve year old female, born in Israel, and is a citizen of Israel. She is the daughter of, and the sole surviving child of Joseph and Levana Hadany. The remaining members of the family presently reside in Haifa, Israel.

16. Simacha Gal-on is a thirty-seven year old male, born in Israel, and is a citizen of Israel. He was the father of Liat Gal-on (age seven), who was killed in the incident. Prior to this incident, he was employed as a bus driver with Egged Corporation. Shoshana Gal-on is a thirty-two year old female, born in Israel, and is a citizen of Israel. She is the wife of Simacha Gal-on. Idan Gal-on is a five year old male, born in Israel, and is a citizen of Israel. He is the son of, and was the sole surviving child of Simacha and Shoshana Gal-on. The remaining members of the family reside in Haifa, Israel.

17. Lily Glottman is a thirty-six year old female, born in Rumania, and is a citizen of Israel. She was the wife of Simon Glottman (age forty-three), who was killed in this incident. Prior to this incident, Lily Glottman was employed as a social worker. Anat Glottman is a seventeen year old female, born in Israel, and is a citizen of Israel. She is the daughter of Lily Glottman. Ilan Glottman is a fourteen year old male, born in Israel, and is a citizen of Israel. He is the son of Lily Glottman. The remaining members of the family reside in Haifa, Israel.

18. Mordechai Shefer is a seventy-two year old retired married male, born in Rumania, and is a citizen of Israel. He and his wife presently reside in Nahalria, Israel.

19. Tova Aharonovits is a forty-five year old married female, born in Lebanon, and is a citizen of Israel. She was the mother of Revital Aharonovits (age fourteen), who was killed in the incident and her only child. Tova Aharonovits and her husband presently reside in Haifa, Israel.

20. Carmela Rosner is a fifty-two year old female, born in Israel, and is a citizen of Israel. She was the wife of Tuvia Rosner (age fifty-four), who was killed in this incident. Prior to this incident, she was employed as a school teacher. Carmela Rosner presently resides in Haifa, Israel.

21. Gideon Haas is a thirty-six year old male, born in Israel, and is a citizen of Israel. Prior to this incident, he was employed as a bus driver with Egged Corporation. Miriam Haas is a thirty-four year old female, born in Israel, and is a citizen of Israel. She is the wife of Gideon

Haas. Michelle Haas is a twelve year old female, born in Israel, and is a citizen of Israel. She is the daughter of Gideon and Miriam Haas. Tal Haas is a six year old female, born in Israel, and is a citizen of Israel. She is the daughter of Gideon and Miriam Haas. The members of the family presently reside in Haifa, Israel.

22. Menashe Malca is a twenty-one year old male, born in Morocco, and is a citizen of Israel. Prior to this incident, he was employed as a computer operator. Eve Malca is a twenty-two year old female, born in Israel, and is a citizen of Israel. She is the wife of Menashe Malca. Menashe and Eve Malca presently reside in Haifa, Israel.

23. Abraham Shamir is a forty-one year old married male, born in Israel, and is a citizen of Israel. Prior to this incident, he was employed as a bus driver with Egged Corporation. Iris Shamir is a seventeen year old female, born in Israel, and is a citizen of Israel. Ayelet Shamir is a fourteen year old female, born in Israel, and is a citizen of Israel. Iris and Ayelet are the daughters of Abraham Shamir. Abraham Shamir and his two plaintiff daughters, together with his wife and another daughter, presently reside in Haifa, Israel.

24. Isaac Vachs is a twenty-five year old single male, born in Israel, and is a citizen of Israel. Prior to this incident, he was employed as a bill collector for a communications company. Isaac Vachs is presently residing in Haifa, Israel.

25. Nessa Schwarz is a fifty-nine year old widowed female, born in the Soviet Union, and is a citizen of Israel. Prior to this incident, she was self-employed as a merchant. Nessa Schwarz presently resides in Haifa, Israel.

26. Joseph Savechnik is a twenty-five year old male, born in the Soviet Union, and is a citizen of Israel. Prior to this incident, he was employed as an electrical technician. Ella Savechnik is a twenty-two year old female, born in the Soviet Union, and is a citizen of Israel. Ella Savechnik is the wife of Joseph Savechnik. Prior to this incident, she was employed as a shipyard worker. Joseph and Elba Savechnik presently reside in Acre, Israel.

27. Abraham Perets is a thirty-three year old married male, born in Bulgaria, and is a citizen of Israel. Prior to this incident, he was employed as a bus driver with Egged Corporation. Abraham Perets, together with his wife and two children, presently reside in Tel Aviv, Israel.

28. Shlomo Zait is a forty-five year old male, born in Israel, and is a citizen of Israel. He was the father of Mordecai Zait (age ten), who was killed in this incident. Prior to this incident, he was employed as a bus driver with Egged Corporation. Judith Zait is a forty-one year old female, born in Israel, and is a citizen of Israel. She is the wife of Shlomo Zait. Gabriel Zait is a fourteen year old male, born in Israel, and is a citizen of Israel. Yfaat Zait is a nine year old female, born in Israel, and is a citizen of Israel. Gabriel and Yfaat Zait are the children of Shlomo and Judith Zait. The remaining members of the family presently reside in Haifa, Israel.

29. Alexander Jaacobi is a sixty year old male, born in Rumania, and is a citizen of Israel. He is a dentist. Ella Jaacobi is a sixty year old female, and is a citizen of Israel. She is the wife of Alexander Jaacobi. Prior to this incident, she was employed as a dental assistant.

Oded Jaacobi, a minor, is the grandson of Alexander Jaacobi, and is a citizen of Israel. (Oded Jaacobi is bringing suit through his mother, Tirtza Jaacobi, as guardian and next friend). The members of the Jaacobi family presently reside in Haifa, Israel.

30. Ruth Drory is a thirty-three year old female, born in the Netherlands, and is a citizen of the Netherlands. She was the wife of Amnon Drory (age thirty-eight), who was killed in the incident. Prior to this incident, she was employed as a teacher. Michael Drory is an eleven year old male, born in Israel, and is a citizen of the Netherlands. Tamar Drory is a ten year old female, born in Israel, and is a citizen of the Netherlands. Ayelet Drory is an eight year old female, born in Israel, and is a citizen of the Netherlands. Michael, Tamar and Ayelet Drory are the children of Ruth Drory. The remaining members of the family presently reside in Haifa, Israel.

31. Uzy Aviasaf is a forty-seven year old male, born in Israel, and is a citizen of Israel. Prior to this incident, he was employed as a bus driver with Egged Corporation. Bruria Aviasaf is a forty-five year old female, born in Rumania, and is a citizen of Israel. Prior to this incident, she was employed as a secretary. She is the wife of Uzy Aviasaf. Michelle Aviasaf is a ten year old female, born in Israel, and is a citizen of Israel. Esther Aviasaf is a sixteen year old female, born in Israel, and is a citizen of Israel. Michelle and Esther Aviasaf are the daughters of Uzy and Bruria Aviasaf. The members of the family presently reside in Haifa, Israel.

32. Bilhah Sela is a forty-one year old married female, born in Bulgaria, and is a citizen of Israel. Prior to

this incident, she was employed as a nurse. She, together with her husband and two children, presently reside in Haifa, Israel.

33. Albert Ashkenazi is a seventy-six year old retired male, born in Bulgaria, and is a citizen of Israel. He was the husband of Mathilda Ashkenazi (age seventy), who was killed in the incident. Albert Ashkenazi presently resides in Haifa, Israel.

34. Yechiel Leibovici is a seventy-two year old retired male, born in Rumania, and is a citizen of Israel. He was the husband of Malca Leibovici (age sixty-eight), who was killed in this incident. Yechiel Leibovici presently resides in Tel Aviv, Israel.

III. DEFENDANTS

35. Libya is a foreign state with which the United States has diplomatic relations. Libya has an embassy at 1118 Twenty-Second Street, N.W., in the District of Columbia. Libya is a member of the United Nations and is a signatory of many of the treaties, covenants, accords, and conventions and has voted in favor of many of the resolutions which are pertinent herein. Libya conducts, funds and directs terrorism and other international criminal activity against civilian populations throughout the world. Libya has repeatedly conducted, funded, directed, ratified and been an accomplice in terrorism and other international criminal activity directed at the civilian population of Israel, at citizens of the United States, and at world civilian air traffic. Libya trains the terrorists and the terrorist instructors of the PLO, funds the PLO, plans the terrorist activities of the PLO and provides naval bases for the PLO in Libya.

36. The PLO is a terrorist organization whose professed purpose is to perpetuate terrorism in Israel and throughout the world. The PLO has engaged in repeated acts of terrorism and other international criminal activity against the civilian population of Israel, citizens of the United States, and world civilian air traffic. The PLO is composed of several groups, including the El Fatah.

37. The Palestine Information Office is the agent and instrumentality of and is legally synonymous with the PLO. The Palestine Information Office conducts propaganda, lobbying and fund-raising within the United States for Libya and the PLO. It has its headquarters at 1326 Eighteenth Street, N.W., in the District of Columbia. The Palestine Information Office engages in fund-raising within the United States to support the terrorist activities of the PLO and Libya, including the terrorist activity which is the subject of this complaint.

38. The National Association of Arab Americans (hereinafter referred to as NAAA) conducts propaganda, lobbying and fund-raising within the United States for Libya and the PLO. NAAA engages in fund-raising within the United States to support the terrorist activities of the PLO and Libya, including the terrorist activity which is the subject of this complaint. NAAA has its headquarters at 1825 Connecticut Avenue, N.W. in the District of Columbia.

39. The Palestine Congress of North America (hereinafter referred to as PCNA) conducts propaganda, lobbying and fund-raising within the United States of Libya and the PLO. PCNA engages in fund-raising within the United States to support the terrorist activities of the

PLO and Libya, including the terrorist activity which is the subject of this complaint. It has its headquarters in the District of Columbia.

IV. TORTIOUS AND CRIMINAL ACTIONS

40. On March 8, 1978, thirteen heavily armed terrorists, members of the El Fatah faction of the PLO, at the direction of the PLO, departed Lebanon by ship for Israel. The mission of these terrorists, as formulated by the PLO, was to capture and to hold as hostages Israeli civilian citizens to extort the release of PLO terrorists in Israeli jails. These terrorists were ordered to kill all the hostages if their mission at any stage did not proceed according to plan. The terrorists landed by boat in Israel on Saturday, March 11, 1978.

41. Upon landing in Israel, the terrorists encountered an unarmed American photographer named Gail Kaplan, whom they proceeded to kill without any justification or excuse.

42. The terrorists then proceeded to the main highway, which runs between Haifa and Tel Aviv. This highway was strictly a civilian corridor. There was no military traffic or legitimate military objective adjacent to the highway.

43. At the highway, the terrorists encountered a civilian, unarmed bus full of families of Egged cooperative members going to Haifa. The terrorists, without any justification or excuse, fired upon the bus, killing and wounding children as well as adults. The bus came to a halt.

44. During the same course of events, the terrorists stopped at gunpoint an unarmed civilian taxi cab, took the

passengers as hostages and then proceeded toward the halted bus.

45. The terrorists fired at the bus passengers who were giving aid to the wounded bus passengers outside the bus and also at the bus passengers who were trying to escape from the scene. The terrorists forced the passengers of the bus and the taxi cab onto the bus. The terrorists fired at passing unarmed civilian automobiles, killing and wounding children and adults. One automobile was stopped, a civilian was taken hostage and was forced onto the bus with the other civilian hostages.

46. The bus was then turned around toward Tel Aviv. The terrorists ordered the bus, together with the taxi cab, to proceed toward Tel Aviv. Terrorists sat on the roof of the taxi cab and shot at the passing cars. In so doing, they killed and injured more unarmed civilians, without any justification or excuse.

47. The PLO members terrorized, tortured, humiliated, assaulted, battered, murdered, injured, inflicted mental distress upon and otherwise subjected the men, women and children hostages in the bus to cruel, inhuman and degrading treatment.

48. Subsequently, the bus came upon a second Egged bus. The second bus was a regularly scheduled, unarmed civilian bus proceeding from Tel Aviv to Haifa. The terrorists shot at and stopped the second bus. They took the passengers of the second bus hostage and forced these hostages onto the first bus. During this process, they continued to shoot at passing civilian cars. The terrorists, with their civilian hostages, then continued toward Tel Aviv.

49. The terrorists tied all the men to the seats with their hands behind their backs. Some of the terrorists humiliated and tortured a sixteen year old boy attending military school in full view of all the hostages on the bus and then in cold blood, murdered him. Other terrorists were throwing hand grenades at passing civilian cars.

50. As before, the PLO members terrorized, tortured, humiliated, assaulted, battered, murdered, injured, inflicted mental distress upon and otherwise subjected the men, women and children hostages in the bus to cruel, inhuman and degrading treatment.

51. Becoming aware of the events described above, the police, using police vehicles as barricades, attempted to stop the bus. The terrorists proceeded through the barricade, shooting and throwing hand grenades at the police officers. Finally, the police officers shot at the wheels and engine of the bus, causing it to come to a stop. At this point, the terrorists began shooting at the hostages in the bus, as well as the police officers and civilians outside the bus. Men, women and children hostages in the bus were killed and injured from the terrorist shooting.

52. The terrorists forced an adult male, Chaviv Enekave, to go outside the bus and deliver an alleged negotiation message to the police officers. Just as Chaviv Enekave left the bus, the terrorists shot him in the back of the head and killed him. Two of his children, seeing their father murdered before their eyes, jumped up in anguish. The terrorists then shot and killed the children. At this time, the terrorists began again to throw hand grenades at the police officers and civilians outside the bus.

53. After the bus came to a halt, many of the hostages tried to escape. The terrorists shot at these hostages, killing and injuring many of them. The terrorists then began to throw hand grenades at the hostages in the back of the bus, killing and injuring still more hostages. The bus started to burn from the terrorist thrown hand grenades. The terrorist would not permit the hostages to leave the smoldering bus.

54. At this point, the terrorists departed the bus, leaving heavy explosives behind in the bus. As they departed the bus, the terrorists used a young female child as a shield. They then threw hand grenades into the bus, igniting the explosives. The bus exploded and burned, killing the remaining nineteen hostages, men tied to the seats, woman and children.

55. At no time did the terrorists encounter any forces of the Israeli mlitary.

56. As a result of the actions of terrorists, twenty-two adults and twelve children were killed, and sixty-three adults and fourteen children were seriously injured.

V. TORTIOUS AND CRIMINAL ACTIONS COMMITTED WITHIN THE UNITED STATES.

57. Acts in furtherance of the tortious and criminal conduct committed against the plaintiffs were performed by the defendants within the United States. The defandants conspired within the United States to commit the terrorist operation and similar terrorist operations. The defendants within the United States planned this terrorist operation and similar terrorist operations. The defendants procured funds from within the United States to support this terrorist operation and similar terrorist oper-

ations. The defendants within the United States procured arms to be used in this terrorist operation and similar operations. The defendants otherwise committed acts within the United States which were in support of and were an integral part of this terrorist operation and similar terrorist operations.

VI. RESPONSIBILITY OF THE DEFENDANTS

58. The PLO is directly responsible for all the tortious and criminal acts committed by the terrorists against the plaintiffs. At all times, the thirteen terrorists were acting as agents for the PLO and were acting within the scope of their employment with the PLO. The PLO recruited the thirteen terrorists specifically for this terrorist operation. The PLO trained the thirteen terrorists for several months specifically for this terrorist operation. The PLO gave the thirteen terrorists the orders pursuant to which they carried out the terrorist operation and committed the tortious and criminal acts against the plaintiffs. The PLO provided the arms, boats, hand grenades and other equipment for this terrorist operation. The PLO, subsequent to this terrorist operation, ratified this terrorist operation and claimed responsibility for this operation and for the tortious and criminal act committed in furtherance thereof. The PLO, together with the other defendants, planned this terrorist operation and the tortious and criminal acts committed against the plaintiffs; conspired to commit this terrorist operation and the tortious and criminal acts committed against the plaintiffs; raised funds to support this terrorist operation and the tortious and criminal acts committed against the plaintiffs; procured arms, boats, hand grenades and other equipment for this terrorist operation and the tortious and criminal acts

committed against the plaintiffs; and otherwise directed, participated in and acted in furtherance of this terrorist operation and the tortious and criminal acts committed against the plaintiffs.

59. Libya is directly responsible for all the tortious and criminal acts committed by the terrorists against the plaintiffs. At all times, the PLO and the thirteen terrorists were acting as agents of and were acting within the scope of their employment with Libya. Libya trained the instructors, who in turn trained the thirteen terrorists for this terrorist operation. The arms, boats, hand grenades and other equipment used in this terrorist operation were provided to the PLO by Libya. The mother ship, which had brought thirteen terrorists to the shore of Israel, immediately went to Libya and was given a hero's welcome by the Chief of Staff of the Libyan armed forces. Libya, subsequent to this terrorist operation, ratified the terrorist operation and claimed responsibility for the tortious and criminal acts committed in furtherance thereof. Libya, together with the other defendants, planned this terrorist operation and the tortious and criminal acts committed against the plaintiffs; conspired to commit this terrorist operation and the tortious and criminal acts committed against the plaintiffs; raised funds to support this terrorist operation and the tortious and criminal acts committed against the plaintiffs; procured arms, boats, hand grenades and other equipment for this terrorist operation and the tortious and criminal acts committed against the plaintiffs; and otherwise directed, participated in and acted in furtherance of this terrorist operation and the tortious and criminal acts committed against the plaintiffs.

60. The Palestine Information Office is directly responsible for all the tortious and criminal acts committed by the terrorists against the plaintiffs. The Palestine Information Office is an agent of and instrumentality of the PLO. The Palestine Information Office, together with the other defendants, planned this terrorist operation and the tortious and criminal acts committed against the plaintiffs; conspired to commit this terrorist operation and the tortious and criminal acts committed against the plaintiffs; raised funds to support this terrorist operation and the tortious and criminal acts committed against the plaintiffs; procured arms, boats, hand grenades and other equipment for this terrorist operation and the tortious and criminal acts committed against the plaintiffs; and otherwise directed, participated in and acted in furtherance of this terrorist operation and the tortious and criminal acts committed against the plaintiffs.

61. The NAAA is directly responsible for all the tortious and criminal acts committed by the terrorists against the plaintiffs. The NAAA, together with the other defendants, planned this terrorist operation and the tortious and criminal acts committed against the plaintiffs; conspired to commit this terrorist operation and the tortious and criminal acts committed against the plaintiffs; raised funds to support this terrorist operation and the tortious and criminal acts committed against the plaintiffs; procured arms, boats, hand genades and other equipment for this terrorist operation and the tortious and criminal acts committed against the plaintiffs; and otherwise directed, participated in and acted in further-

ance of this terrorist operation and the tortious and criminal acts committed against the plaintiffs.

62. The PCNA is directly responsible for all the tortious and criminal acts committed by the terrorists against the plaintiffs. The PCNA, together with the other defendants, planned this terrorist operation and the tortious and criminal acts committed against the plaintiffs; conspired to commit this terrorist operation and the tortious and criminal acts committed against the plaintiffs; raised funds to support this terrorist operation and the tortious and criminal acts committed against the plaintiffs; procured arms, boats, hand grenades and other equipment for this terrorist operation and the tortious and criminal acts committed against the plaintiffs; and otherwise directed, participated in and acted in furtherance of this terrorist operation and the tortious and criminal acts committed against the plaintiffs.

COUNT I

VII. ASSAULT, BATTERY, FALSE IMPRISONMENT, INTENTIONAL INFLICTION OF MENTAL DISTRESS AND INTENTIONAL INFLICTION OF CRUEL, INHUMAN AND DEGRADING TREATMENT

63. Paragraphs 1 through 62 are incorporated herein as if set out in their entirety.

64. The defendants tortured, terrorized, humiliated, wounded, injured, held hostage, threatened, inflicted mental distress upon, assaulted and battered the plaintiffs and otherwise subjected the plaintiffs to cruel, inhuman and degrading treatment. At no time was there

justification or excuse for any of the tortious actions committed by the terrorists against the plaintiffs.

65. The defendats committed each of the above tortious actions with extreme malice and intent. It was the preplanned purpose and intent of the defendants to commit each of the above tortious actions in a manner so as to inflict the maximum harm upon the plaintiffs and with total disregard of the human rights and dignity of the plaintiffs.

66. In so doing the above tortious acts with said intent and malice, the defendants committed the intentional tort of assault against the plaintiffs.

67. In so doing the above tortious acts with said intent and malice, the defendants committed the intentional tort of battery against the plaintiffs.

68. In so doing the above tortious acts with said intent and malice, the defendants committed the intentional tort of false imprisonment against the plaintiffs.

69. In so doing the above tortious acts with said intent and malice, the defendants committed the intentional tort of infliction of mental distress against the plaintiffs.

70. In so doing the above tortious acts with said intent and malice, the defendants committed the intentional tort of infliction of cruel, inhuman and degrading treatment against the plaintiffs.

71. Having committed the above described tortious actions and the intentional torts of assault, battery, false imprisonment, intentional infliction of mental distress

and/or intentional infliction of cruel, inhuman and degrading treatment against the plaintiffs, the defendants, jointly and severally, are liable for the damages caused to the plaintiffs as a result of said tortious actions.

72. Having committed the above described tortious actions and the intentional torts of assault, battery, false imprisonment, intentional infliction of mental distress and/or intentional infliction of cruel, inhuman and degrading treatment, with said malice and intent, against the plaintiffs, the defendants, jointly and severally, are subject to punitive damages.

COUNT II

VIII. TORTIOUS ACTIONS IN VIOLATION OF THE LAW OF NATIONS

73. Paragraphs 1 through 72 are incorporated herein as if set out in their entirety.

74. The defendants tortured, terrorized, humiliated, wounded, injured, held hostage, threatened, inflicted mental distress upon, assaulted and battered the plaintiffs and otherwise subjected the plaintiffs to cruel, inhuman and degrading treatment. At no time was there justification or excuse for any of the tortious actions committed by the terrorists against the plaintiffs.

75. The defendants committed each of the above tortious actions with extreme malice and intent. It was the preplanned purpose and intent of the defendants to commit each of the above tortious actions in a manner so as to inflict the maximum harm upon the plaintiffs and with total disregard of the human rights and dignity of the plaintiffs.

76. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the law of nations.

77. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the Geneva Convention for the Protection of Civilian Persons in Time of War (August 12, 1949), including Articles 1, 2, 3, 27, 32, 34 and 147 of that Convention.

78. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of Protocols I and II to the Geneva Convention of 12 August 1949 (June 7, 1977), including the Preamble and Articles 8, 9, 10, 11, 16, 20, 35, 48, 50, 51, 52, 57, 58, 59, 61, 62, 67, 68, 76, 77, 78, 85, 87 and 91 of Protocol I; and the Preamble and Articles 1, 2, 4, 5, 7, 8, 9, 10 and 13 of Protocol II.

79. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the Charter of the United Nations, including Articles 1 and 2 of that Charter.

80. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, General Assembly Resolution 2625 (XXV) (October 24, 1970).

81. In so doing the above tortious acts with said malice and intent, the defendants committed torts against

the plaintiffs in violation of the Universal Declaration of Human Rights, General Assembly Resolution 217(A) (III) (December 10, 1948), including the Preamble and Articles 1, 2, 3, 5, 6, 7, 8 and 9 of that Declaration.

82. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the International Covenant on Civil and Political Rights, General Assembly Resolution 2200(A) (XXI) (December 16, 1966), including the Preamble and Articles 2, 6, 7, 9 and 10 of that Covenant.

83. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the Basic Principles for the Protection of Civilian Populations in Armed Conflicts, General Assembly Resolution 2675 (XXV) (December 9, 1970).

84. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the Hague Conventions of 1899 (II) and 1907 (IV) Respecting the Laws and Customs of War on Land.

85. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the Geneva Convention for the Prevention and Punishment of Terrorism (November 16, 1937), including Articles 1, 2, 3 and 10 of that Convention.

86. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the Convention on the Pre-

vention and Punishment of the Crime of Genocide, General Assembly Resolution 260A (III) (December 9, 1948).

87. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the Declaration of the Rights of the Child, General Assembly Resolution 1386 (XIV) (1959).

88. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the American Convention of Human Rights, OAS Treaty Series No. 36 (signed on November 22, 1969).

89. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949, including Articles 3, 13, 129 and 130 of that Convention.

90. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the 1975 Declaration on the Protection of All Persons from Being Subjected to Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, General Assembly Resolution 3452 (XXX) (December 9, 1975).

91. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the principles of the law of nations pronounced in the United States proposed Draft Convention for the Prevention and Punishment of Certain

Acts of Terrorism (September 25, 1972), including the Preamble and Articles 1 and 10 of that Draft Convention.

92. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the principles of the law of nations pronounced in the European Convention on the Suppression of Terrorism (November, 1976).

93. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the principles of the law of nations against the taking of hostages pronounced in General Assembly Resolution 103 (XXXI) (January 21, 1977).

94. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the principles of the law of nations against committing terrorism on civilian populations pronounced in General Assembly Resolution 2444 (XXIII) (1968).

95. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the Organization of American States: Convention to Prevent and Punish Acts of Terrorism (February 2, 1971).

96. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the principles of the law of nations pronounced in the Inter-American Judicial Committee (Organization of American States) Draft Convention Defining Torture as an International Crime

(February 6, 1980) and Draft Convention on Terrorism and Kidnapping of Persons for Purposes of Extortion (adopted September 26, 1970).

97. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the principles of the law of nations against the taking of hostages pronounced in the Federal Republic of Germany proposed draft of an International Convention Against the Taking of Hostages (December 4, 1979).

98. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the principles of the law of nations against terrorism directed at civilian populations pronounced in General Assembly Resolutions 3034 (XXVII) (December 18, 1972), 102 (XXXI) (December 15, 1976), 147 (XXXII) (December 16, 1977) and 145 (XXXIV) (January 22, 1980).

99. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the principles of the law of nations pronounced in the Conference on Security and Cooperation in Europe: Final Act (Helsinki Accord) (August 1, 1975).

100. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the League of Nations Counsel Resolutions on International Terrorism (December, 1934).

101. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of other conventions, covenants, treaties, accords and resolutions adopted and/or recognized as part of the law of nations within the meaning of 28 U.S.C. Section 1350.

102. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the principles of the law of nations accepted by International Custom, the Laws of Civil Nations and judicial decisions and the teachings of learned commentators.

103. Having so committed the above described tortious actions against the plaintiffs and having violated the law of nations in so doing, the defendants, jointly and severally, are liable for the damages caused to the plaintiffs as a result of said tortious actions.

104. Having so committed the above described tortious actions against the plaintiffs with said malice and intent and having violated the law of nations in so doing, the defendants, jointly and severally, are subject to punitive damages.

COUNT III

IX. TORTIOUS ACTIONS IN VIOLATION OF THE TREATIES OF THE UNITED STATES

105. Paragraphs 1 through 104 are incorporated herein as if set out in their entirety.

106. The defendants tortured, terrorized, humiliated, wounded, injured, held hostage, threatened, inflicted

mental distress upon, assaulted and battered the plaintiffs and otherwise subjected the plaintiffs to cruel, inhuman and degrading treatment. At no time was there justification or excuse for any of the tortious actions committed by the terrorists against the plaintiffs.

107. The defendants committed each of the above tortious actions with extreme malice and intent. It was the preplanned purpose and intent of the defendants to commit each of the above tortious actions in a manner so as to inflict the maximum harm upon the plaintiffs and with total disregard of the human rights and dignity of the plaintiffs.

108. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the treaties of the United States.

109. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the Geneva Convention for the Protection of Civilian Persons in Time of War (August 12, 1949), including Articles 1, 2, 3, 27, 32, 34 and 147 of that Convention.

110. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of Protocols I and II to the Geneva Convention of 12 August 1949 (June 7, 1977), including the Preamble and Articles 8, 9, 10, 11, 16, 20, 35, 48, 50, 51, 52, 57, 58, 59, 61, 62, 67, 68, 76, 77, 78, 85, 87 and 91 of Protocol I; and the Preamble and Articles 1, 2, 4, 5, 7, 8, 9, 10 and 13 of Protocol II.

111. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the Charter of the United Nations, including Articles 1 and 2 of that Charter.

112. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, General Assembly Resolution 2625 (XXV) (October 24, 1970).

113. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the Universal Declaration of Human Rights, General Assembly Resolution 217(A) (III) (December 10, 1948), including the Preamble and Articles 1, 2, 3, 5, 6, 7, 8 and 9 of that Declaration.

114. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the International Covenant on Civil and Political Rights, General Assembly Resolution 2200(A) (XXI) (December 16, 1966), including the Preamble and Articles 2, 6, 7, 9 and 10 of that Covenant.

115. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the Basic Principles for the Protection of Civilian Populations in Armed Conflicts, General Assembly Resolution 2675 (XXV) (December 9, 1970).

116. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the Hague Conventions of 1899 (II) and 1907 (IV) Respecting the Laws and Customs of War on Land.

117. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the Convention on the Prevention and Punishment of the Crime of Genocide, General Assembly Resolution 260A (III) (December 9, 1948).

118. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the Declaration of the Rights of the Child, General Assembly Resolution 1386 (XIV) (1959).

119. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the American Convention of Human Rights, OAS Treaty Series No. 36 (signed on November 22, 1969).

120. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949, including Articles 3, 13, 129 and 130 of that Convention.

121. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of the Organization of American States: Convention to Prevent and Punish Acts of Terrorism (February 2, 1971).

122. In so doing the above tortious acts with said malice and intent, the defendants committed torts against the plaintiffs in violation of other treaties of the United States.

123. Having so committed the above described tortious actions against the plaintiffs and having violated the treaties of the United States in so doing, the defendants, jointly and severally, are liable for the damages caused to the plaintiffs as a result of said tortious actions.

124. Having so committed the above described tortious actions against the plaintiffs with said malice and intent and having violated the treaties of the United States in so doing, the defendants, jointly and severally, are subject to punitive damages.

COUNT IV

X. TORTIOUS ACTIONS IN VIOLATION OF THE LAWS OF THE UNITED STATES

125. Paragraphs 1 through 124 are incorporated herein as if set out in their entirety.

126. The defendants tortured, terrorized, humiliated, wounded, injured, held hostage, threatened, inflicted mental distress upon, assaulted and battered the plaintiffs and otherwise subjected the plaintiffs to cruel, inhuman and degrading treatment. At no time was there justification or excuse for any of the tortious actions committed by the terrorists against the plaintiffs.

127. The defendants committed each of the above tortious actions with extreme malice and intent. It was the preplanned purpose and intent of the defendants to

commit each of the above tortious actions in a manner so as to inflict the maximum harm upon the plaintiffs and with total disregard of the human rights and dignity of the plaintiffs.

128. In so doing the above tortious acts with said malice and intent, in so furthering the commission of said tortious acts, and in so conspiring to commit said tortious acts and the acts in furtherance of said tortious acts, the defendants committed torts against the plaintiffs in violation of the laws of the United States.

129. In so doing the above tortious acts with said malice and intent, in so furthering the commission of said tortious acts, and in so conspiring to commit said tortious acts and the acts in furtherance of said tortious acts, the defendants committed torts against the plaintiffs in violation of 18 U.S.C. Section 956 (Conspiracy to injure property of foreign government).

130. In so doing the above tortious acts with said malice and intent, in so furthering the commission of said tortious acts, and in so conspiring to commit said tortious acts and the acts in furtherance of said tortious acts, the defendants committed torts against the plaintiffs in violation of 18 U.S.C. Section 957 (Possession of property in aid of foreign government).

131. In so doing the above tortious acts with said malice and intent, in so furthering the commission of said tortious acts, and in so conspiring to commit said tortious acts and the acts in furtherance of said tortious acts, the defendants committed torts against the plaintiffs in violation of 18 U.S.C. Section 960 (Expedition against friendly nation).

132. In so doing the above tortious acts with said malice and intent, in so furthering the commission of said tortious acts, and in so conspiring to commit said tortious acts and the acts in furtherance of said tortious acts, the defendants committed torts against the plaintiffs in violation of 18 U.S.C. Section 1651 (Piracy under law of nations).

133. In so doing the above tortious acts with said malice and intent, in so furthering the commission of said tortious acts, and in so conspiring to commit said tortious acts and the acts in furtherance of said tortious acts, the defendants committed torts against the plaintiffs in violation of 18 U.S.C. Section 1652 (Citizens as pirates).

134. In so doing the above tortious acts with said malice and intent, in so furthering the commission of said tortious acts, and in so conspiring to commit said tortious acts and the acts in furtherance of said tortious acts, the defendants committed torts against the plaintiffs in violation of 18 U.S.C. Section 1654 (Arming or serving of privateers).

135. In so doing the above tortious acts with said malice and intent, in so furthering the commission of said tortious acts, and in so conspiring to commit said tortious acts and the acts in furtherance of said tortious acts, the defendants committed torts against the plaintiffs in violation of 18 U.S.C. Section 1661 (Robbery ashore).

136. In so doing the above tortious acts with said malice and intent, in so furthering the commission of said tortious acts, and in so conspiring to commit said tortious acts and the acts in furtherance of said tortious acts, the defendants committed torts against the plaintiffs in

violation of 18 U.S.C. Section 371 (Conspiracy to commit offense or to defraud the United States).

137. In so doing the above tortious acts with said malice and intent, in so furthering the commission of said tortious acts, and in so conspiring to commit said tortious acts and the acts in furtherance of said tortious acts, the defendants committed torts against the plaintiffs in violation of other laws of the United States.

138. Having so committed the above described tortious actions against the plaintiffs and having violated the laws of the United States in so doing, the defendants, jointly and severally, are liable for the damages caused to the plaintiffs as a result of said tortious actions.

139. Having committed the above described tortious actions against the plaintiffs with said malice and intent and having violated the laws of the United States in so doing, the defendants, jointly and severally, are subject to punitive damages.

COUNT V

XI. CONSPIRACY TO COMMIT INTENTIONAL TORTS; TORTS IN VIOLATION OF THE LAW OF NATIONS; TORTS IN VIOLATION OF TREATIES OF THE UNITED STATES; AND TORTS IN VIOLATION OF THE LAWS OF THE UNITED STATES

140. Paragraphs 1 through 139 are incorporated herein as if set out in their entirety.

141. The defendants tortured, terrorized, humiliated, wounded, injured, held hostage, threatened, inflicted mental distress upon, assaulted and battered the plain-

tiffs and otherwise subjected the plaintiffs to cruel, inhuman and degrading treatment. At no time was there justification or excuse for any of the tortious actions committed by the terrorists against the plaintiffs.

142. The defendants committed each of the above tortious actions with extreme malice and intent. It was the preplanned purpose and intent of the defendants to commit each of the above tortious actions in a manner so as to inflict the maximum harm upon the plaintiffs and with total disregard of the human rights and dignity of the plaintiffs.

143. The defendants, with said malice and intent, conspired within the United States and elsewhere to commit the intentional torts of assault, battery, false imprisonment, infliction of mental distress, and infliction of cruel, inhuman and degrading treatment against the plaintiffs.

144. The defendants, with said malice and intent, conspired within the United States and elsewhere to commit tortious acts in violation of the law of nations against the plaintiffs.

145. The defendants, with said malice and intent, conspired within the United States and elsewhere to commit tortious actions in violation of the treaties of the United States against the plaintiffs.

146. The defendants, with said malice and intent, conspired within the United States and elsewhere to commit tortious actions in violation of the laws of the United States against the plaintiffs.

147. Having so conspired to commit the above described tortious actions with said malice and intent against the plaintiffs, and the tortious actions having been committed against the plaintiffs, the defendants, jointly and severally, are liable for the damages caused to the plaintiffs as a result of said tortious actions.

148. Having so conspired to commit the above described tortious actions with said malice and intent against the plaintiffs, and the tortious actions having been committed against the plaintiffs, the defendants, jointly and severally, are subject to punitive damages.

XII. COMPENSATORY AND PUNITIVE DAMAGES

149. Paragraphs 1 through 148 are incorporated herein as if set out in their entirety.

150. As a direct and proximate result of the defendants' tortious actions, each of the plaintiffs has suffered and continues to suffer serious and irreparable damages.

151. Hanoch Tel-Oren was driving his car, in which his wife, three sons, and two daughters were passengers, on the Tel Aviv-Haifa Highway. The terrorists shot at his car and at the passengers therein. He sustained serious and permanent injury to his hands, chest and otherwise to his body as a result of being repeatedly shot by the terrorists. As a direct result of the injuries received from the actions of the terrorists, he was hospitalized for over two weeks. He was subjected to terror, assault, battery and other cruel, inhuman and degrading treatment by the terrorists, sustaining the permanent mental, emotional and psychological injuries therefrom. He helplessly watched as the terrorists shot to death his fifteen

year old son, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. His ability to earn a living has been substantially impaired. He lost both the joys previously associated with his now deceased young son. He has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against him by the defendants, plaintiff, Hanoch Tel-Oren, prays to this Court against the defendants, jointly and severally, for Ten Million Dollars ($10,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

152. Sharona Tel-Oren was a passenger in her family car, driven by her husband, as the car proceeded on the Tel Aviv-Haifa Highway. The terrorists shot at the car and at the passengers therein. She was subjected to terror, assault, battery and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She helplessly watched as the terrorists shot to death her fifteen year old son, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. Her ability to earn a living has been substantially impaired. She has lost the joys previously associated with her now deceased young son. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plain-

tiff, Sharona Tel-Oren, prays to this Court against the defendants, jointly and severally, for Eight Million Dollars ($8,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

153. Adiel Tel-Oren was a passenger in the family car driven by his father. The terrorists shot at the car and at the passengers therein. He was subjected to terror, assault, battery and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. He helplessly watched as the terrorists shot to death his brother, shot his father, and shot his older brother, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. His ability to earn a living has been substantially impaired. He has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against him by the defendants, plaintiff, Adiel Tel-Oren, prays to this Court against the defendants, jointly and severally, for Four Milion Dollars ($4,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

154. Reviva Tel-Oren was a passenger in the family car driven by her father. The terrorists shot at the car and at the passengers therein. She was subjected to terror, assault, battery and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent

mental, emotional and psychological injuries therefrom. She helplessly watched as the terrorists shot to death her brother, shot her father, and shot her older brother, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. Her ability to earn a living has been substantially impaired. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Reviva Tel-Oren through her guardian and next friend Hanoch Tel-Oren, prays to this Court against the defendants, jointly and severally, for Four Million Dollars ($4,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

155. Corenet Tel-Oren was a passenger in the family car driven by her father. The terrorists shot at the car and at the passengers therein. She was subjected to terror, assault, battery and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She helplessly watched as the terrorists shot to death her brother, shot her father, and shot her older brother, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. Her ability to earn a living has been substantially impaired. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plain-

tiff, Corenet Tel-Oren through her guardian and next friend Hanoch Tel-Oren, prays to this Court against the defendants, jointly and severally, for Four Million Dollars ($4,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

156. Nir Tel-Oren was a passenger in the family car driven by his father, as it was proceeding on the Tel Aviv-Haifa Highway. The terrorists shot at the car and at the passengers therein. He sustained serious and permanent injuries to his leg, as a result of being shot by the terrorists. As a direct result of the injuries received from the actions of the terrorists, he was hospitalized for substantial periods of time. He was subjected to terror, assault, battery and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. He helplessly watched as the terrorists shot to death his brother, shot his father, and shot his younger brother, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. His ability to earn a living has been substantially impaired. He has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against him by the defendants, plaintiff, Nir Tel-Oren, prays to this Court against the defendants, jointly and severally, for Six Million Dollars ($6,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

157. Joseph Hochman was a passenger on the first bus, and was held hostage from when the terrorists seized that bus until the end of this incident. He suffered serious and permanent injuries to his leg and to his entire body from the effects of hand genades, including the implantment of shrapnel, and from being repeatedly shot by the terrorists. As a direct result of the injuries received from the actions of the terrorists, both of his legs have been amputated. As a direct result of the injuries received from the actions of the terrorists, he has sustained a one hundred percent disability; he has shrapnel implanted throughout his entire body; and he has been hospitalized for substantial periods of time. He was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. He helplessly watched as his wife was shot by the terrorists and then burned to death in the smoldering bus. He sustained permanent mental, emotional and psychological injuries associated with such a horrible event. He helplessly watched as the terrorists killed his seven year old son and his three year old son, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. He helplessly watched as the terrorists repeatedly physically and mentally abused his wife, his two sons, and the other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. His ability to earn a living has been substantially impaired. He has lost the support, comfort, solace and companionship previously received from his now deceased wife. He has lost the joys previously

associated with his now deceased sons. He has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against him by the defendants, plaintiff, Joseph Hochman, prays to this Court against the defendants, jointly and severally, for Twenty-Four Million Dollars ($24,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

158. Monique Enekave was a passenger on the first bus and was held hostage from when the terrorists seized that bus until the end of this incident. She sustained serious and permanent injuries to her chin, head, chest and other parts of her body as the result of being repeatedly shot by the terrorists and otherwise. As a direct result of the injuries received from the actions of the terrorists, she was hospitalized for substantial periods of time. She was subjected to torture, terror, humiliation, assault, battery, false imprisonment and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She helplessly watched as the terrorists shot to death her husband and two young children, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. She helplessly watched as the terrorists repeatedly physically and mentally abused her two young daughters and other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She has lost

the support, comfort, solace, consortium and companionship previously received from her now deceased husband. She has lost the joys previously associated with her now deceased two young children. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff Monique Enekave prays to this Court against the defendants, jointly and severally, for Ten Million Dollars ($10,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

159. Anat Enekave was a passenger on the first bus, and was held hostage from when the terrorists seized that bus until the end of this incident. She suffered serious and permanent injuries to her body from the effects of hand grenades, including the implantment of shrapnel in her body. As a direct result of the injuries received from the actions of the terrorists, she was hospitalized for substantial periods of time. She was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She helplessly watched as the terrorists shot to death her father and her two young siblings, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. She helplessly watched as the terrorists repeatedly physically and mentally abused the members of her family and other hostages in the bus, sustaining

permanent mental, emotional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She has lost the support, comfort, solace and companionship previously received from her now deceased father. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Anat Enekave through her guardian and next friend Monique Enekave, prays to this Court against the defendants, jointly and severally, for Six Million Dollars ($6,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

160. Tal Enekave was a passenger on the first bus, and was held hostage from when the terrorists seized that bus until the end of this incident. She was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She helplessly watched as the terrorists shot to death her father and her two young siblings, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. She helplessly watched as the terrorists repeatedly physically and mentally abused the members of her family and other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She has lost the support, com-

fort, solace and companionship previously received from her now deceased father. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Tal Enekave through her guardian and next friend Monique Enekave, prays to this Court against the defendants, jointly and severally, for Six Million Dollars ($6,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

161. Adina Haloune was a passenger on the second bus, and was held hostage from when the terrorists seized that bus until the end of this incident. She sustained serious and permanent injuries to her shoulder and back, and otherwise to her body when she attempted to escape from the terrorists. As a direct result of the injuries received from the actions of the terrorists, he was hospitalized for substantial periods of time. She was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She watched helplessly as her husband, who was tied to the seat of the bus, burned to death when the bus exploded at the end of this incident. She sustained permanent mental, emotional and psychological injuries associated with such a horrible event. She helplessly watched as the terrorists repeatedly physically and mentally abused her husband and other hostages in the bus, sustaining

permanent mental, emotional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She has lost the support, comfort, solace, consortium and companionship previously received from her now deceased husband. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Adina Haloune, prays to this Court against the defendants, jointly and severally, for Three Million Dollars ($3,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

162. Tamar Elefand was a passenger on the first bus, and was held hostage from when the terrorists seized that bus until the end of this incident. She sustained serious and permanent injuries to her stomach, and otherwise to her body, as a result of being repeatedly shot by the terrorists, and from the implantment of shrapnel throughout her body. As a direct result of the injuries received from the actions of the terrorists, she was hospitalized for over two months. She was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She helplessly watched as the terrorists shot to death her husband and her six year old son, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. She helplessly watched as

the terrorists repeatedly physically and mentally abused her husband and her son, and the other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She has lost the support, comfort, solace, consortium and companionship previously received from her now deceased husband. She has lost the joys previously associated with her now deceased young son. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Tamar Elefand, prays to this Court against the defendants, jointly and severally, for Twelve Million Dollars ($12,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

163. Ronit Elefand was a passenger on the first bus, and was held hostage from when the terrorists seized that bus until the end of this incident. She sustained serious and permanent injuries throughout her body, as a result of being repeatedly shot by the terrorists. As a direct result of the injuries received from the actions of the terrorists, she has been hospitalized on more than five different occasions and is still receiving medical treatment today. She was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She helplessly watched as the ter-

rorists shot to death her father and brother, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. She helplessly watched as the terrorists repeatedly physically and mentally abused her mother and father, her brother, and the other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She has lost the support, comfort, solace and companionship previously received from her now deceased father. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Ronit Elefand through her guardian and next friend Tamar Elefand, prays to this Court against the defendants, jointly and severally, for Twelve Million Dollars ($12,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

164. Maya Susinsky Schur was driving her car on the Tel Aviv-Haifa Highway. Her mother and father were passengers in the car at the time. The terrorists shot and threw hand granades at her car. As a result therefrom, she sustained serious and permanent injuries to her head, and throughout her body. As a result therefrom, both her parents were killed. She sustained permanent mental, emotional and psychological injuries from this ordeal. As a direct result of the injuries received from the actions of the terrorists, she was hospitalized

for substantial periods of time. She was subjected to terror, assault, battery and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She has lost the support, comfort, solace and companionship previously received from her now deceased parents. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Maya Susinsky Schur, prays to this Court against the defendants, jointly and severally, for Six Million Dollars ($6,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

165. Moshe Alagim was a passenger on the second bus, and was shot by the terrorists upon being transferred from the second bus to the first bus. As a result therefrom, he sustained serious and permanent injuries to his leg and otherwise to his body. As a direct result of the injuries received from the actions of the terrorists, he has been hospitalized for several months and has undergone several operations. He was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. His ability to earn a living has been substantially impaired. He has been otherwise seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against him by the defendants, plaintiff, Moshe Alagim, prays to this Court against the defendants, jointly and severally, for Six Million Dollars ($6,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

166. Eliezer Kroytatro was a passenger in the initially seized taxi cab. He was held hostage from when the terrorists forced him on the first bus until the end of this incident. He sustained serious and permanent injuries to his leg and otherwise to his body, when he attempted to escape from the terrorists at the end of this incident. As a direct result of the injuries received from the actions of the terrorists, he was hospitalized for over one week. He was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. He helplessly watched as the terrorists repeatedly physically and mentally abused the other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. His ability to earn a living has been substantially impaired. He has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against him by the defendants, plaintiff, Eliezer Kroytatro, prays to this Court against the defendants, jointly and severally, for Four Million Dollars ($4,000,000.00) in compensatory damages, Ten Million

Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

167. Isaac Amir was a police officer who attempted to stop the bus by blockading its way to Tel Aviv. He sustained serious and permanent injuries to his legs and otherwise to his body as a result of being repeatedly shot by the terrorists and as a result of being struck by the oncoming bus. As a direct result of the injuries received from the actions of the terrorists, he was hospitalized for over forty-five days, and was bed-ridden for more than six months subsequent to this hospitalization and later underwent an operation with three more months of hospitalization. He was subjected to terror, assault, battery, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. His ability to earn a living has been substantially impaired. He has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against him by the defendants, plaintiff, Isaac Amir, prays to this Court against the defendants, jointly and severally, for Six Million Dollars ($6,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

168. Ettel Sacherbrot was a passenger on the second bus, and was held hostage from when the terrorists seized that bus until the end of this incident. She sustained serious and permanent injuries to her head,

chest, and throughout her body. She received second-degree burns all over her body. As a direct result of the injuries received from the actions of the terrorists, she was hospitalized for substantial periods of time. She was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She helplessly watched as the terrorists repeatedly physically and mentally abused the other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Ettel Sacherbrot, prays to this Court against the defendants, jointly and severally, for Six Million Dollars ($6,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

169. Isaac Mishkal was a passenger on the first bus, and was held hostage from when the terrorists seized that bus until the end of this incident. He sustained serious and permanent injuries to his spine and other parts of his body from the effects of hand grenades, including the implantment of shrapnel and otherwise. As a direct result of the injuries received from the actions of the terrorists, he was hospitalized for substantial periods of time. He was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, in-

human and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. He watched helplessly as his seven year old son burned to death in the smoldering bus, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. He helplessly watched as the terrorists repeatedly physically and mentally abused his wife, his two young children, and the other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. His ability to earn a living has been substantially impaired. He has lost the joys previously associated with his now deceased young son. He has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against him by the defendants, plaintiff, Isaac Mishkal, prays to this Court against the defendants, jointly and severally, for Ten Million Dollars ($10,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

170. Rachel Mishkal was a passenger on the first bus, and was held hostage from when the terrorists seized that bus until the end of this incident. She sustained serious and permanent injuries to her hand and otherwise to her body, as a result of being repeatedly shot by the terrorists. As a direct result of the injuries received from the actions of the terrorists, she was hospitalized for substantial periods of time. She was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and de-

grading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She helplessly watched as her seven year old son burned to death in the smoldering bus, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. She helplessly watched as the terrorists repeatedly physically and mentally abused the members of her family, and the other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She lost the joys previously associated with her now deceased young son. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Rachel Mishkal, prays to this Court against the defendants, jointly and severally, for Six Million Dollars ($6,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem apprpriate.

171. Ruth Mishkal was a passenger on the first bus, and was held hostage from when the terrorists seized that bus until the end of this incident. She sustained serious and permanent injuries to her head and otherwise to her body from the effects of hand grenades, including the implantment of shrapnel. As a direct result of the injuries received from the actions of the terrorists, she was hospitalized for substantial periods of time. She was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and de-

grading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She helplessly watched as her seven year old brother burned to death in the smoldering bus, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. She helplessly watched as the terrorists repeatedly physically and mentally abused the members of her family, and the other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Ruth Mishkal through her guardian and next friend Isaac Mishkal, prays to this Court against the defendants, jointly and severally, for Six Million Dollars ($6,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

172. Joseph Hadany was a passenger on the first bus. He sustained serious and permanent injuries to his head and otherwise to his body as a result of being repeatedly shot by the terrorists. As a direct result of the injuries received from the actions of the terrorists, he underwent serious brain operations, was hospitalized in excess of one month and was a convalescent for over eighteen months. He was subjected to terror, assault, battery and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. He watched help-

lessly as the terrorists shot to death his five year old daughter while he was holding her in his arms, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. His ability to earn a living has been substantially impaired. He has lost the joys previously associated with his now deceased young daughter. He has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against him by the defendants, plaintiff, Joseph Hadany, prays to this Court against the defendants, jointly and severally, for Twelve Million Dollars ($12,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

173. Levana Hadany was a passenger on the first bus. She was subjected to terror, assault, battery and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She watched helplessly as the terrorists shot to death her five year old daughter, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. Her ability to earn a living has been substantially impaired. She has lost the joys previously associated with her now deceased young daughter. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Levana Hadany, prays to this Court against the de-

fendants, jointly and severally, for Six Million Dollars ($6,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

174. Ayelet Hadany was a passenger on the first bus. She was subjected to terror, assault, battery and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She watched helplessly as the terrorists shot to death her young sister, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. Her ability to earn a living has been substantially impaired. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Ayelet Hadany through her guardian and next friend Joseph Hadany, prays to this Court against the defendants, jointly and severally, for Six Million Dollars ($6,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

175. Simacha Gal-on was a passenger on the first bus, and was held hostage from when the terrorists seized that bus until the end of this incident. He sustained serious and permanent injuries to his stomach and otherwise to his body as a result of being repeatedly shot by the terrorists. As a direct result of the injuries received from the actions of the terrorists, he was hospital-

ized for substantial periods of time. He was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. He watched helplessly as his seven year old daughter was shot by the terrorists and then burned to death in the smouldering bus, sustaining permanent mental, emotion-and and psychological injuries associated with such a horrible event. He helplessly watched as the terrorists repeatedly physically and mentally abused his wife, his daughter and son, and the other hostages in the bus, sustaining permanent mental, emotional and physical injuries therefrom. His ability to earn a living has been substantially impaired. He has lost the joys previously associated with his now deceased young daughter. He has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against him by the defendants, plaintiff, Simacha Gal-on prays to this Court against the defendants, jointly and severally, for Eight Million Dollars ($8,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

176. Soshana Gal-on was a passenger on the first bus, and was held hostage from when the terrorists seized that bus until the end of this incident. She suffered serious and permanent injuries to her body from the effects of hand grenades, including the implantment of shrapnel. As a direct result of the injuries received from the actions of the terrorists, she was hospitalized

for substantial periods of time. She was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She helplessly watched as her seven year old daughter was shot by the terrorists and then burned to death in the smoldering bus. She sustained permanent mental, emotional and psychological injuries associated with such a horrible event. She helplessly watched as the terrorists repeatedly physically and mentally abused her husband, her daughter and son, and other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She has lost the joys previously associated with her now deceased young daughter. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Shoshana Gal-on prays to this Court against the defendants, jointly and severally for Six Million Dollars ($6,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

177. Idan Gal-on was a passenger on the first bus, and was held hostage from when the terrorists seized that bus until the end of this incident. He suffered serious and permanent injuries to his body. He was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent

mental, emotional and psychological injuries therefrom. He helplessly watched as his seven year old sister was shot by the terrorists and then burned to death in the smoldering bus. He sustained permanent mental, emotional and psychological injuries associated with such a horrible event. He helplessly watched as the terrorists repeatedly physically and mentally abused his mother and father, his sister, and other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. His ability to earn a living has been substantially impaired. He has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against him by the defendants, plaintiff, Idan Gal-on through his guardian and next friend, Simacha Galon, prays to this Court against the defendants, jointly and severally, for Six Million Dollars ($6,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

178. Lily Glottman was a passenger on the first bus, and was held hostage from when the terrorists seized that bus until the end of this incident. She suffered serious and permanent injuries to her ear, right hand, and otherwise to her body as a result of being repeatedly shot by the terrorists, and from the effects of hand grenades, including the implantment of shrapnel. As a direct result of the injuries received from the actions of the terrorists, she was hospitalized for substantial periods of time. She was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and

degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She helplessly watched as her husband burned to death in the smoldering bus, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. She helplessly watched as the terrorists repeatedly physically and mentally abused her husband, her daughter and son, and other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She has lost the support, comfort, solace, consortium and companionship previously received from her now deceased husband. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Lily Glottman, prays to this Court against the defendants, jointly and severally, for Eight Million Dollars ($8,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

179. Anat Glottman was a passenger on the first bus, and was held hostage from when the terrorists seized that bus until the end of this incident. She suffered serious and permanent injuries to her knee and her legs and otherwise to her body from the effects of hand grenades, including the implantment of shrapnel and otherwise. As a direct result of the injuries received from the actions of the terrorists, she was hospitalized for substantial periods of time. She was subjected to torture, terror, humiliation, assault, battery, false im-

prisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She helplessly watched as her father burned to death in the smoldering bus, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. She helplessly watched as the terrorists repeatedly physically and mentally abused her mother and father, her brother, and other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. She has lost the support, comfort, solace and companionship previously received from her now deceased father. Her ability to earn a living has been substantially impaired. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Anat Glottman through her guardian and next friend Lily Glottman, prays to this Court against the defendants, jointly and severally, for Six Million Dollars ($6,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

180. Ilan Glottman was a passenger on the first bus, and was held hostage from when the terrorists seized that bus until the end of this incident. He was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. He helplessly

watched as his father burned to death in the smoldering bus, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. He helplessly watched as the terrorists repeatedly physically and mentally abused his mother and father, his sister, and other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. He has lost the support, comfort, solace and companionship previously received from his now deceased father. His ability to earn a living has been substantially impaired. He has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against him by the defendants, plaintiff, Ilan Glottman through his guardian and next friend Lily Glottman, prays to this Court against the defendants, jointly and severally, for Four Million Dollars ($4,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, pre-judgment interest, and such other relief as this Court may deem appropriate.

181. Mordechai Shefer was a passenger on the second bus, and was held hostage from when the terrorists seized that bus until the end of this incident. He sustained serious and permanent injuries to his shoulder, and otherwise to his body, as a result of being repeatedly hot by the terrorists. As a direct result of the injuries received from the actions of the terrorists, he was hospitalized for substantial periods of time. He was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and

psychological injuries therefrom. He helplessly watched as the terrorists repeatedly physically and mentally abused the other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. His ability to earn a living has been substantially impaired. He has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against him by the defendants, plaintiff, Mordechai Shefer, prays to this Court against the defendants, jointly and severally, for Two Million Dollars ($2,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, pre-judgment interest, and such other relief as this Court may deem appropriate.

182. Tova Aharonovits was a passenger on the second bus, and was held hostage from when the terrorists seized that bus until the end of this incident. She sustained burns all over her body, suffering today from more than sixty-five percent total burn of her body, disfigurement and other serious and permanent physical and mental injuries therefrom. As a direct result of the injuries received from the actions of the terrorists, she was hospitalized for more than six months. She was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She watched helplessly as her fourteen year old daughter was killed in the smoldering bus, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. She helplessly watched as the terrorists repeatedly

physically and mentally abused her daughter, and other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She has lost the joys previously associated with her now deceased young daughter. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Tova Aharonovits, prays to this Court against the defendants, jointly and severally, for Fourteen Million Dollars ($14,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

183. Carmela Rosner was a passenger in an automobile driven by her husband on the Haifa-Tel Aviv Highway. The terrorists shot at and threw hand grenades at their car. As a result thereof, her husband was killed. As a result thereof, she sustained serious and permanent injuries to her body, and was hospitalized for a substantial period of time. She was subjected to terror, assault, battery and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She helplessly watched as the terrorists shot her husband to death, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. Her ability to earn a living has been substantially impaired. She has lost the support, comfort, solace, consortium and companionship previously received from her now deceased hus-

band. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Carmela Rosner, prays to this Court against the defendants, jointly and severally, for Six Million Dollars ($6,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

184. Gideon Haas was the bus driver of the first bus, and was held hostage from when the terrorists seized that bus until the end of this incident. He sustained serious and permanent injuries to his shoulder, chest, arms, legs and otherwise to his body, as a result of being repeatedly shot by the terrorists, and from the effects of hand grenades, including the implantment of shrapnel. He was hospitalized for over four months as a direct result of the injuries received from the actions of the terrorists, and is still receiving substantial treatment. He has sustained more than a forty-seven percent total disability. He was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. He helplessly watched as the terrorists repeatedly physically and mentally abused several members of his family, and other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. His ability to earn a living has been substantially impaired. He has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against him by the defendants, plaintiff, Gideon Haas, prays to this Court against the defendants, jointly and severally, for Sixteen Million Dollars ($16,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

185. Miriam Haas was a passenger on the first bus, and was held hostage from when the terrorists seized that bus until the end of this incident. She sustained serious and permanent injuries to her face and otherwise to her body from the effects of hand grenades, including the implantment of shrapnel and otherwise. As a direct result of the injuries received from the actions of the terrorists, she was hospitalized for substantial periods of time. She was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She helplessly watched as the terrorists repeatedly phsysically and mentally abused several members of her family, and other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Miriam Haas, prays to this Court against the defendants, jointly and severally, for Six Million Dollars ($6,000,-

000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

186. Michelle Haas was a passenger on the first bus, and was held hostage from when the terrorists seized that bus until the end of this incident. She was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She helplessly watched as the terrorists repeatedly physically and mentally abused the various members of her family, and other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Michelle Haas through her guardian and next friend Gideon Haas, prays to this Court against the defendants, jointly and severally, for Four Million Dollars ($4,000,-000.00) in compensatory damages, Ten Million Dollars $10,000,000,00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

187. Tal Haas was a passenger on the first bus, and was held hostage from when the terrorists seized that bus until the end of this incident. She was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment

by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She helplessly watched as the terrorists repeatedly physically and mentally abused the various members of her family, and other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Tal Haas through her guardian and next friend Gideon Haas, prays to this Court against the defendants, jointly and severally, for Four Million Dollars ($4,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.-00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

188. Menashe Malca was a passenger on the second bus, and was held hostage from when the terrorists seized that bus until the end of this incident. He sustained serious and permanent injuries to his leg, hands and otherwise to his body, as a result of being repeatedly shot by the terrorists. As a result of the injuries received from the actions of the terrorists, he was hospitalized for months. He was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. He helplessly watched as the terrorists repeatedly physically and mentally abused his wife and other hostages in the bus, sustaining permanent mental, emotional and

psychological injuries therefrom. His ability to earn a living has been substantially impaired. He has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against him by the defendants, plaintiff, Menashe Malca, prays to this Court against the defendants, jointly and severally, for Eight Million Dollars ($8,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

189. Eve Malca was a passenger on the second bus, and was held hostage from when the terrorists seized that bus until the end of this incident. She was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She helplessly watched as the terrorists repeatedly physically and mentally abused her husband and other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Eve Malca, prays to this Court against the defendants, jointly and severally, for Three Million Dollars ($3,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

190. Abraham Shamir was a passenger on the first bus, and was held hostage from when the terrorists seized that bus until the end of this incident. He sustained serious and permanent injuries to his arms, hands, neurological system, muscular system and otherwise to his body, as a result of the actions of the terrorists. He was shot and blinded in the right eye by the terrorists. He was repeatedly shot by the terrorists, and one such bullet remains in his left lung. As a direct result of the injuries caused him by the terrorists, he has been hospitalized for more than seven months, and is still receiving substantial treatment for those injuries. As a direct result of the injuries caused him by the terrorists, he has blood clots throughout his body. As a direct result of the injuries received from the actions of the terrorists, he has not less than seventy-seven percent disability. He was subjected to torture, terror, humiliation, assault, battery, false imprisonment and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. He helplessly watched as the terrorists shot his fourteen and seventeen year old daughters, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. He helplessly watched as the terrorists repeatedly physically and mentally abused his two young daughters, and other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. His ability to earn a living has been substantially impaired. He has otherwise been seriously and irreparaby damaged.

WHEREFORE, as a consequence of the tortious actions committed against him by the defendants, plaintiff, Abraham Shamir, prays to this Court against the defend-

ants, jointly and severally, for Eighteen Million Dollars $18,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

191. Iris Shamir was a passenger on the first bus, and was held hostage from when the terrorists seized that bus until the end of this incident. She sustained serious and permanent injuries to her stomach, legs and otherwise to her body, as a result of being repeatedly shot by the terrorists. As a direct result of the injuries received from the actions of the terrorists, she was hospitalized in excess of three weeks. She was subjected to torture, terror, humiliation, assault, battery, false imprisonment and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She watched helplessly as the terrorists shot her father and sister, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. She helplessly watched as the terrorists repeatedly physically and mentally abused the members of her family, and other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Iris Shamir through her guardian and next friend Abraham Shamir, prays to this Court against the defendants, jointly and severally, for Six Million Dollars

($6,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

192. Ayelet Shamir was a passenger on the first bus, and was held hostage from when the terrorists seized that bus until the end of this incident. She sustained serious and permanent injuries to her shoulder, hand, legs, hips and otherwise to her body, as a result of being repeatedly shot by the terrorists and otherwise. As a direct result of the injuries received from the actions of the terrorists, her right leg is paralyzed, she walks with a limp and otherwise has limited locomotion. As a direct result of the injuries received from the actions of the terrorists, she was hospitalized for substantial periods of time. She was subjected to torture, terror, humiliation, assault, battery, false imprisonment and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She watched helplessly as the terrorists shot her father and sister, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. She helplessly watched as the terrorists repeatedly physically and mentally abused the members of her family, and other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plain-

tiff, Ayelet Shamir through her guardian and next friend Abraham Shamir, prays to this Court against the defendants, jointly and severally, for Ten Million Dollars ($10,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

193. Isaac Vachs was a passenger on the second bus, and was held hostage from when the terrorists seized that bus until the end of this incident. He sustained serious and permanent injuries to his legs and otherwise to his body as a result of being repeatedly shot by the terrorists and otherwise. As a direct result of the injuries received from the actions of the terrorists, he was hospitalized for substantial periods of time. He was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. He helplessly watched as the terrorists repeatedly physically and mentally abused the other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. His ability to earn a living has been substantially impaired. He has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against him by the defendants, plaintiff, Isaac Vachs, prays to this Court against the defendants, jointly and severally, for Eight Million Dollars ($8,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys'

fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

194. Nessa Schwarz was a passenger in a taxi cab and was held hostage from when the terrorists forcefully removed her from that cab and placed her on the first bus until the end of this incident. She sustained serious and permanent injuries to her back and otherwise to her body when she attempted to escape from the smoldering bus. She sustained serious burns to her body. As a direct result of the injuries received from the actions of the terrorists, she was hospitalized for substantial periods of time. She was subjected to torture, terror, humiliation, assault, battery, false imprisonment and other cruel, inhuman and degrading treatment by the terrorists, sustaining mental, emotional and psychological injuries therefrom. She helplessly watched as the terrorists repeatedly physically and mentally abused the other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Nessa Schwarz, prays to this Court against the defendants, jointly and severally, for Six Million Dollars ($6,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

195. Joseph Savechnik was a passenger on the second bus, and was held hostage from when the terrorists

seized that bus until the end of this incident. He was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. He helplessly watched as the terrorists shot his wife, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. He helplessly watched as the terrorists repeatedly physically and mentally abused his wife and other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. His ability to earn a living has been substantially impaired. He has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against him by the defendants, plaintiff, Joseph Savechnik, prays to this Court against the defendants, jointly and severally, for Six Million Dollars ($6,000,000.00) in compensatory damages, Ten Million Dollars $10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

196. Ella Savechnik was a passenger on the second bus, and was held hostage from when the terrorists seized that bus until the end of this incident. She sustained serious and permanent injuries to her body as a result of being repeatedly shot by the terrorists, and from the smoke in the bus. As a direct result of the injuries received from the actions of the terrorists, she was hospitalized for substantial periods of time. She was subjected to torture, terror, humiliation, assault, battery,

false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She helplessly watched as the terrorists repeatedly physically and mentally abused her husband and other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Ella Savechnik, prays to this Court against the defendants, jointly and severally, for Six Million Dollars ($6,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

197. Abraham Perets was the bus driver of the second bus, and was held hostage from when the terrorists seized that bus until the end of this incident. He sustained serious and permanent injuries to his shoulder, ribs, legs, hand and otherwise to his body, as a result of being repeatedly shot by the terrorists and otherwise. As a direct result of the injuries received from the actions of the terrorists, he was hospitalized for substantial periods of time. He was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. He helplessly watched as the terrorists repeatedly physically and mentally abused other hostages in the bus, sustaining permanent

mental, emotional and psychological injuries therefrom. His ability to earn a living has been substantially impaired. He has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against him by the defendants, plaintiff, Abraham Perets, prays to this Court against the defendants, jointly and severally, for Ten Million Dollars $10,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

198. Schlomo Zait was a passenger on the first bus, and was held hostage from when the terrorists seized that bus until the end of this incident. He sustained serious and permanent injuries to his spine, legs, ears, shoulders and otherwise to his body, as a result of being repeatedly shot by the terrorists and from the effects of hand grenades, including the implantment of shrapnel. As a direct result of the injuries received from the actions of the terrorists, he has more than fifty percent disability. He was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. He watched helplessly as his ten year old son burned to death in the smoldering bus, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. He helplessly watched as the terorists repeatedly physically and mentally abused the members of his family and other hostages

in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. His ability to earn a living has been substantially impaired. He has lost the joys previously associated with his now deceased young son. He has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against him by the defendants, plaintiff, Schlomo Zait, prays to this Court against the defendants, jointly and severally, for Sixteen Million Dollars ($16,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

199. Gabriel Zait was a passenger on the first bus, and was held hostage from when the terrorists seized that bus until the end of this incident. He sustained serious and permanent injuries to his face and otherwise to his body, from the effects of hand grenades, including the implantment of shrapnel and otherwise. As a direct result of the injuries received from the actions of the terrorists, he was hospitalized for substantial periods of time. He was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. He helplessly watched the terrorists shoot to death his brother, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. He helplessly watched as the terrorists repeatedly physically and mentally abused the members

of his family and other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. His ability to earn a living has been substantially impaired. He has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against him by the defendants, plaintiff, Gabriel Zait through his guardian and next friend Shlomo Zait, prays to this Court against the defendants, jointly and severally, for Twelve Million Dollars ($12,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

200. Yfaat Zait was a passenger on the first bus. She was subjected to terror, assault, battery and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Yfaat Zait through her guardian and next friend Shlomo Zait, prays to this Court against the defendants, jointly and severally, for Four Million Dollars ($4,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

201. Judith Zait was a passenger on the first bus. She was subjected to terror, assault, battery and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Judith Zait, prays to this Court against the defendants, jointly and severally, for Four Million Dollars ($4,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

202. Alexander Jaacobi was driving his car, with his wife and grandson, along the Tel Aviv-Haifa Highway. The terrorists shot at the car and the persons therein. He stopped to help the wounded passengers of the first bus, and while treating them, he was repeatedly shot by the terrorists. As a direct result of the injuries received from the actions of the terrorists, he developed a serious heart condition. As a direct result of the injuries received from the actions of the terrorists, he was hospitalized for substantial periods of time. He was subjected to terror, assault, battery and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. His ability to earn a living has been substantially impaired. He has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against him by the defendants, plaintiff, Alexander Jaacobi, prays to this Court against the defendants, jointly and severally, for Eight Million Dollars ($8,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

203. Ella Jaacobi was a passenger in her family car, driven by her husband, along the Tel Aviv-Haifa Highway. The terrorists shot at the car and the persons therein. She was subjected to terror, assault, battery and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She watched helplessly as the terrorists shot her husband, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. Her ability to earn a living has been substantially impaired. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Ella Jaacobi, prays to this Court against the defendants, jointly and severally, for Four Million Dollars ($4,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

204. Oded Jaacobi was a passenger in his family car, driven by his grandfather, along the Tel Aviv-Haifa Highway. The terrorists shot at the car and the persons

therein. He was subjected to terror, assault, battery and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. He watched helplessly as the terrorists shot his grandfather, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. His ability to earn a living has been substantially impaired. He has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against him by the defendants, plaintiff, Oded Jaacobi through his guardian and next friend Tirtza Jaacobi, prays to this Court against the defendants, jointly and severally, for Three Million Dollars ($3,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

205. Ruth Drory was a passenger on the first bus, and was held hostage from when the terrorists seized that bus until the end of this incident. She sustained serious and permanent injuries to her hand, shoulders, ear, and otherwise to her body from the effects of hand grenades, including the implantment of shrapnel and otherwise. As a direct result of injuries received from the actions of the terrorists, she can no longer use her right hand. As a direct result of the injuries received from the actions of the terrorists, she has more than fifty percent disability. As a direct result of the injuries received from the actions of the terrorists, she was hospitalized for substantial periods of time. She was sub-

jected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She helplessly watched as the terrorists shot to death her husband, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. She helplessly watched as the terrorists repeatedly physically and mentally abused the members of her family, and other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She has lost the support, comfort, solace, consortium and companionship previously received from her now deceased husband. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Ruth Drory, prays to this Court against the defendants, jointly and severally, for Sixteen Million Dollars ($16,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

206. Michael Drory was a passenger on the first bus, and was held hostage from when the terrorists seized that bus until the end of this incident. He was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. He helplessly watched as the terrorists shot to death his

father, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. He helplessly watched as the terrorists repeatedly physically and mentally abused the members of his family, and other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. His ability to earn a living has been substantially impaired. He has lost the support, comfort, solace and companionship previously received from his now deceased father. He has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against him by the defendants, plaintiff, Michael Drory through his guardian and next friend Ruth Drory, prays to this Court against the defendants, jointly and severally, for Six Million Dollars ($6,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

207. Tamar Drory was a passenger on the first bus, and was held hostage from when the terrorists seized that bus until the end of this incident. She was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She helplessly watched as the terrorists shot to death her father, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. She helplessly watched as the terrorists repeatedly physically and mentally abused the members of her family, and other hostages in the bus, sustaining permanent mental, emo-

tional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She has lost the support, comfort, solace and companionship previously received from her now deceased father. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Tamar Drory through her guardian next friend Ruth Drory, prays to this Court against the defendants, jointly and severally, for Six Million Dollars ($6,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

208. Ayelet Drory was a passenger on the first bus. She sustained serious and permanent injuries to her body from shrapnel and otherwise. As a direct result of the injuries received from the actions of the terrorists, she was hospitalized for substantial periods of time. She was subjected to terror, assault, battery and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She helplessly watched as the terrorists shot to death her father, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. Her ability to earn a living has been substantially impaired. She has lost the support, comfort, solace and companionship previously received from her now deceased father. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Ayelet Drory through her guardian and next friend Ruth Drory, prays to this Court against the defendants, jointly and severally, for Six Million Dollars ($6,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

209. Uzy Aviasaf was a passenger on the first bus, and was held hostage from when the terrorists seized that bus until the end of this incident. He was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. He helplessly watched as the terrorists repeatedly physically and mentally abused the members of his family, and other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. His ability to earn a living has been substantially impaired. He has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against him by the defendants, plaintiff, Uzy Aviasaf, prays to this Court against the defendants, jointly and severally, for Three Million Dollars ($3,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

210. Bruria Aviasaf was a passenger on the first bus. She sustained serious and permanent injuries to

her head, hands, and otherwise to her body from being repeatedly shot by the terrorists, and from shrapnel. As a direct result of the injuries received from the actions of the terrorists, she was hospitalized for over one week, sustained more than ten percent disability, and could not work for over six months. She was subjected to terror, assault, battery and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Bruria Aviasaf, prays to this Court against the defendants, jointly and severally, for Six Million Dollars ($6,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

211. Michelle Aviasaf was a passenger on the first bus. She was subjected to terror, assault, battery and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Michelle Aviasaf through her guardian and next friend Uzy Aviasaf, prays to this Court against the de-

fendants, jointly and severally, for Two Million Dollars ($2,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

212. Esther Aviasaf was a passenger on the first bus, and was held hostage from when the terrorists seized that bus until the end of this incident. She was used as a human shield when the terrorists finally departed from the burning bus. She was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She helplessly watched as the terrorists repeatedly physically and mentally abused her father and other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Esther Aviasaf through her guardian and next friend Uzy Aviasaf, prays to this Court against the defendants, jointly and severally, for Ten Million Dollars ($10,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudiment interest, and such other relief as this Court may deem appropriate.

213. Bilhah Sela was a passenger on the second bus, and was held hostage from when the terrorists seized that

bus until the end of this incident. She suffered serious and permanent injuries to her legs and otherwise to her body from the effects of hand grenades. As a direct result of the injuries received from the actions of the terrorists, she was hospitalized for substantial periods of time. She was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. She helplessly watched as the terrorists shot to death her mother, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. She helplessly watched as the terrorists repeatedly physically and mentally abused the members of her family and other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. Her ability to earn a living has been substantially impaired. She has lost the support, comfort, solace and companionship previously received from her now deceased mother. She has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against her by the defendants, plaintiff, Bilhah Sela, prays to this Court against the defendants, jointly and severally, for Six Million Dollars ($6,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

214. Albert Ashkenazi was a passenger on the second bus, and was held hostage from when the terrorists seized that bus until the end of this incident. He sus-

tained serious and permanent injuries to his ears, head, hearing system, circulatory system, and otherwise to his body, as a result of the actions of the terrorists. As a direct result of the injuries received from the actions of the terrorists, part of his ear was burnt, part of his ear is missing, he has hearing loss, and he now suffers from a serious heart condition. As a direct result of the injuries received from the actions of the terrorists, he was hospitalized for substantial periods of time. He was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. He helplessly watched as the terrorists shot to death his wife, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. He helplessly watched as the terrorists repeatedly physically and mentally abused members of his family and other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. His ability to earn a living has been substantially impaired. He has lost the support, comfort, solace, consortium and companionship previously received from his now deceased wife. He has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against him by the defendants, plaintiff, Albert Ashkenazi, prays to this Court against the defendants, jointly and severally, for Six Million Dollars ($6,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

215. Yechiel Leibovici was a passenger on the second bus, and was held hostage from when the terrorists seized that bus until the end of this incident. He sustained serious and permanent injuries to his body as a result of being shot by the terrorists. As a direct result of the injuries received from the actions of the terrorists, he was hospitalized for substantial periods of time. He was subjected to torture, terror, humiliation, assault, battery, false imprisonment, and other cruel, inhuman and degrading treatment by the terrorists, sustaining permanent mental, emotional and psychological injuries therefrom. He helplessly watched as the terrorists shot to death his wife, sustaining permanent mental, emotional and psychological injuries associated with such a horrible event. He helplessly watched as the terrorists repeatedly physically and mentally abused his wife, and other hostages in the bus, sustaining permanent mental, emotional and psychological injuries therefrom. His ability to earn a living has been substantially impaired. He has lost the support, comfort, solace, consortium and companionship previously received from his now deceased wife. He has otherwise been seriously and irreparably damaged.

WHEREFORE, as a consequence of the tortious actions committed against him by the defendants, plaintiff, Yechiel Leibovici, prays to this Court against the defendants, jointly and severally, for Six Million Dollars ($6,000,000.00) in compensatory damages, Ten Million Dollars ($10,000,000.00) in punitive damages, attorneys' fees and costs, prejudgment interest, and such other relief as this Court may deem appropriate.

PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL MATTERS PERMISSIBLE BY LAW.

Respectfully submitted,

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APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 81-0563

HANOCH TEL-OREN on Behalf of the Deceased Imry Tel-Oren, *et al.*,

Plaintiffs,

v.

LIBYAN ARAB REPUBLIC, *et al.*,

Defendants.

Civil Action No. 81-0564

HANOCH TEL-OREN, *et al.*,

Plaintiffs,

v.

LIBYAN ARAB REPUBLIC, *et al.*,

Defendants.

MOTION OF DEFENDANT NATIONAL ASSOCIATION OF ARAB AMERICANS TO DISMISS THE COMPLAINTS FOR LACK OF SUBJECT MATTER JURISDICTION AND FOR EXPIRATION OF THE LIMITATIONS PERIOD

Pursuant to this Court's Order of April 1, 1981, Defendant National Association of Arab Americans, Inc. ("NAAA"), through counsel, hereby moves this Court to dismiss the Complaints in Civil Action Nos. 81-0563 and 81-0564 as to the NAAA on the grounds that (1) this Court lacks subject matter jurisdiction over these actions as against the NAAA, and (2) these actions are barred under the applicable statute of limitations.

The attached Memorandum of Points and Authorities is submitted in support of this Motion and alternative forms of orders are submitted herewith.

Pursuant to Local Rule 1-9(f), the NAAA hereby requests an oral hearing on this Motion.

Hill, Christopher and Phillips, P.C.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 81-0563

HANOCH TEL-OREN on Behalf of the Deceased Imry Tel-Oren, *et al.*,

Plaintiffs,

v.

LIBYAN ARAB REPUBLIC, *et al.*,

Defendants.

Civil Action No. 81-0564

HANOCH TEL-OREN, *et al.*,

Plaintiffs,

v.

LIBYAN ARAB REPUBLIC, *et al.*,

Defendants.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE MOTION OF NATIONAL ASSOCIATION OF ARAB AMERICANS TO DISMISS THE COMPLAINTS FOR LACK OF SUBJECT MATTER JURISDICTION AND FOR EXPIRATION OF THE LIMITATIONS PERIOD

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 81-0563

HANOCH TEL-OREN, on behalf of the deceased, Imry Tel-Oren, *et al.*,

Plaintiffs,

v.

LIBYAN ARAB REUBLIC, *et al.*,

Defendants.

Civil Action No. 81-0564

HANOCH TEL-OREN, *et al.*,

Plaintiffs,

v.

LIBYAN ARAB REPUBLIC, *et al.*,

Defendants.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE MOTION OF NATIONAL ASSOCIATION OF ARAB AMERICANS TO DISMISS THE COMPLAINTS FOR LACK OF SUBJECT MATTER JURISDICTION AND FOR EXPIRATION OF THE LIMITATIONS PERIOD

This Memorandum is submitted in support of the Motion of the National Association of Arab Americans, Inc. ("NAAA") to Dismiss the Complaints, and is filed in accordance with this Court's Order of April 1, 1981.[1] There are two independent reasons for this Court to grant this Motion. First, the jurisdictional statutes relied upon by plaintiffs, 28 U.S.C. §§ 1330-32, 1350, 1602-11, do not provide subject matter jurisdiction over plaintiffs' claims against the NAAA. Second, plaintiffs' claims, all of which constitutite alleged intentional torts, are barred by the applicable one-year statute of limitations of D.C. Code § 12-301(4).

The detailed legal arguments which demonstrate that plaintiffs' Complaints must be dismissed are discussed in Sections II and III of this Memorandum. An understanding of the background to these cases is necessary to the disposition of the NAAA's Motion.

I. *Background.*

These cases concern the March 11, 1978 attack on a bus between Haifa and Tel Aviv in Israel. Plaintiffs or

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[1] The NAAA is hereby filing a single Memorandum of Points and Authorities in support of its Motion to Dismiss each Complaint. Since each case involves the same legal issues, it was determined that a separate Motion and Memorandum was not required in each case. Duplicate originals of the Motion and Memorandum will be filed in Dockets 81-0563 and 81-0564.

persons represented by plaintiffs allegedly suffered severe injuries during that attack and have brought these damage actions for intentional torts against those entities allegedly responsible for that attack.

The NAAA was named as a defendant in both cases. However, plaintiffs do not allege that the NAAA actually participated in the March 11, 1978 attack. Indeed, plaintiffs allege that the attack was carried out by the El Fatah faction of the Palestine Liberation Organization ("PLO"), acting "*at the direction of the PLO.*"[2] Nevertheless, plaintiffs alleged that the NAAA, with the other defendants,

— planned the operation;

— conspired to commit the operation;

— raised funds to support the operation; and

— procured arms, boats, hand grenades and other equipment for the operation.

Based upon these alleged acts, plaintiffs assert that the NAAA is "directly responsible"[3] for the injuries they have suffered.

The NAAA completely denies plaintiffs' allegations.[4] The NAAA is a well known and widely respected organi-

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[2] Complaint, Civil Action No. 81-0563, ¶ 32; Complaint, Civil Action No. 81-0564, ¶ 40.

[3] Complaint, Civil Action No. 81-0563, ¶ 53; Complaint, Civil Action No. 81-0564, ¶ 61.

[4] See Answer of NAAA, Civil Action No. 81-0563, filed March 24, 1981; Answer of NAAA, Civil Action No. 81-0564, filed March 24, 1981; Affidavit of Joseph D. Baroody, attached hereto as Exhibit 1.

zation whose members are American citizens of Arab descent. Its primary purpose is to represent the two million Arab Americans in matters relating to the United States' national and international interests and to fight institutionalized prejudice against Arab Americans. The NAAA has been warmly received by the American government. Indeed, it has received messages of appreciation and well-wishes from Presidents Ford and Carter every year since 1975, as documented in the attached Affidavit of Joseph D. Baroody (Exhibit 1), who was President of the NAAA when the March 11, 1978 incident occurred. For example, on April 12, 1976, President Ford wrote:

> Your organization has done much to enhance understanding and goodwill between the people of the U.S. and our friends in Arab nations. Such efforts help us greatly in attaining the final peaceful settlement in the Middle East to which our Government remains committed. I commend you in fostering ties that are essential to our common goal of peace, as a natural adjunct to our governmental efforts to forge mutually beneficial political and economic ties in that region.[5]

Two years later, President Carter wrote on March 8, 1978, just three days before the bus incident:

> I have great respect for your organization's important role in representing the values and political views of the large body of American citizens who share a common Arab heritage. Your leaders have met on numerous occasions with members of my staff, and I have had the opportunity to meet with your President, Joseph Baroody, and others at the White House. I commend your responsible efforts to ensure that the

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[5] Affidavit of Joseph D. Baroody, Appendix B.

> views of Arab Americans are widely heard and properly understood.[6]

As Mr. Baroody states: "Surely, if the NAAA were even remotely affiliated with the kinds of activities alleged in the pending litigation, it could not possibly have had the warm reception it has enjoyed from the various instruments of government."[7]

The NAAA first learned of the March 11, 1978 incident through media reports which followed the event. Shortly thereafter, the NAAA condemned that attack as well as the subsequent Israeli invasion of Southern Lebanon which was undertaken in alleged retaliation for the bus attack. The NAAA stated:

> Terrorism must be condemned, whether it is conducted by resistance groups or by the forces of a sovereign state.[8]

In short, not only did the NAAA not plan, conspire, fund, or procure equipment for the March 11 attack, the NAAA has pointedly condemned that attack.

The Complaints in these cases do not contradict the NAAA's denial of involvement. Indeed, the Complaints never provide even a scintilla of evidence to suggest that the NAAA was, in fact, involved in the March 11 attack. Thus, in contrast to plaintiffs' vivid and detailed portrayal of the March 11 attack,[9] plaintiffs' description of

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6 *Id.*, Appendix D.

7 *Id.* ¶ 6.

8 *Id.* ¶ 7, and Appendix G.

9 See Complaint, Civil Action No. 81-0563, ¶¶ 32-48; Complaint, Civil Action No. 81-0564, ¶¶ 4056.

the NAAA's alleged involvement consists of broad, generalized allegations, which are *word for word* identical to the allegations made against two other defendants, the Palestine Information Office and the Palestine Congress of North America.[10] It is a matter of public record, however, that these entities did not even exist at the time of the incident in question.[11] Thus, the broad allegations against these entities are clearly false. Similarly, the meaningless allegations against the NAAA do not, in fact, document any tortious conduct by the NAAA and, as demonstrated hereafter, compel dismissal of the Complaints.

II. *This Court Lacks Subject Matter Jurisdiction Over The Claims Against The NAAA.*

Plaintiffs allege that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1330-32, 1350 and 1602-11. We demonstrate below, however, that *none* of these statutes grants jurisdiction over the claims against the NAAA.

— There is no Section 1331 jurisdiction because these cases do not arise under the laws or treaties of the United States and because the laws and treaties relied upon by plaintiffs provide no cause of action to plaintiffs;

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10 *Compare* ¶¶ 52-54 in Complaint of Civil Action No. 81-0563; ¶¶ 60-62 in Complaint of Civil Action No. 81-0564.

11 The Palestine Congress of North America was incorporated in September, 1980. Formation of the organization was first considered at a "constitutional convention" held in August, 1979. The Palestine Information Office was organized on March 15, 1978.

— There is no jurisdiction under the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§ 1330, 1602-11, because those statutes only provide jurisdiction over claims against a foreign state, not against the NAAA. Indeed, even against a foreign state such as Libya, these statutes provide no jurisdiction since the alleged tortious injury was suffered outside the United States;

— There is no Section 1332 jurisdiction because there is no diversity of citizenship; and

— There is no Section 1350 jurisdiction because all plaintiffs are not aliens as required by Section 1350 and because the NAAA is not even alleged to have committed a tortious act.

Accordingly, as regards the NAAA, this Court lacks subject matter jurisdiction and the Complaints must be dismissed.

A. *This Court Has No Subject Matter Jurisdiction Under 28 U.S.C. § 1331.*

Plaintiffs have alleged that this Court has federal question jurisdiction under 28 U.S.C. § 1331. To sustain such jurisdiction, plaintiffs must demonstrate that their claims "arise under" the laws or treaties of the United States.[12] Plaintiffs cannot demonstrate the requisite nexus to United States laws or treaties and, accordingly, this Court lacks Section 1331 subject matter jurisdiction.

Claims do not "arise under" American laws or treaties merely by plaintiffs' reference in the Complaints to laws

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[12] Counts III and IV of each Complaint, entitled respectively "Tortious Actions in Violation of the Treaties of the United States" and "Tortious Actions in Violation of the Laws of the United States," are based upon Section 1331 subject matter jurisdiction.

or treaties of the United States. *See Prescription Plan Service Corp. v. Franco,* 552 F.2d 493, 495 (2d Cir. 1977); *Ivy Broadcasting Co. v. American Tel. & Tel. Co.,* 391 F.2d 486 (2d Cir. 1968). The *Ivy* court stated:

> [T]hat federal law furnishes a necessary ingredient of a claim is insufficient as a basis for federal jurisdiction, unless the claim presents an issue requiring construction of an Act of Congress or unless a distinctive policy of an Act of Congress requires that federal principles control the disposition of the claim.

Id. at 493. Similarly, a "court must ascertain from the complaint whether federal law is a *pivotal* issue in the case, one that is basic in the determination of the conflict between the parties." *North American Phillips Corp. v. Emery Air Freight Corp.,* 579 F.2d 229, 233 (2d Cir. 1978) emphasis supplied). *See also Gully v. First National Bank,* 299 U.S. 109, 117-18 (1936). In a recent case involving the disasterous oil spill off the French coast by the tanker *Amoco Cadiz,* the court articulated the "arising under" test in the following terms:

> A suit arises under the Constitution, laws or treaties of the United States where it *actually and substantially* involves a dispute or controversy concerning the validity or interpretation of such federal issues, the determination of which will have a *direct impact* on the plaintiff's success or failure.

Chapalain Compagnie v. Standard Oil Co. (Indiana), 467 F. Supp. 181, 184 (N.D. Ill. 1978) (emphasis supplied).

In the instant cases, no American law or treaty is a pivotal substantive issue, "the determination of which will have a direct impact on plaintiff's success or failure." Similarly, these cases do not require "construction of an

Act of Congress" and they involve no distinctive policy questions which require that federal principles control disposition of the claims. Rather, these cases involve straightforward allegations of intentional torts. This is plainly demonstrated by Count I of each Complaint in which plaintiffs allege such torts as assault, battery and false imprisonmment. The remaining Counts do not allege any different acts by defendants. Thus, plaintiffs' right to recover in these cases does not involve federal laws or treaties in any manner, much less the "pivotal," "substantial" and "direct" involvement required under applicable case law. Plaintiffs' right to recover rests on only one thing: factual support for the bald allegations in the Complaints that defendants did, in fact, commit the acts asserted. Thus, plaintiffs' extensive citation of federal laws and treaties cannot be used to create subject matter jurisdiction when the plain fact is that no federal claim is involved at all.

Although the foregoing constitutes a sufficient basis for rejection of Section 1331 jurisdiction, there is a further reason that such jurisdiction cannot be sustained: neither the treaties nor the laws cited by plaintiffs provides any basis for the private cause of action which plaintiffs attempt to assert. We address first the federal statutes relied upon by plaintiffs and then the treaties.

1. *Plainiffs Have No Private Right of Action Under the Laws of the United States.*

In Count IV of each Complaint, plaintiffs allege identical causes of action for violation of selected criminal laws of the United States. However, under settled legal principles, the alleged criminal violations do not provide

plaintiffs any implied private right of action for civil damages. Accordngly, without a civil remedy arising under federal law, Section 1331 jurisdiction cannot be sustained.

(a) *The Nature of Plaintiff's Count IV Claims.*

Plaintiffs' claims in Count IV fall into three classes. First, in three paragraphs,[13] plaintiffs allege violation of 18 U.S.C. §§ 956, 957, and 960, which pertain, respectively, to conspiracy to injure specific foreign government property, possession of papers or property to aid a foreign government in violating a United States penal statute, and participation in an expedition against a friendly nation.

Second, in four paragraphs,[14] plaintiffs allege acts of piracy in violation of 18 U.S.C. §§ 1651, 1652, 1654 and 1661. These statutes concern, respectively, piracy on the high seas, citizens of the United States committing piracy on the high seas, piratical acts by United States citizens against other United States citizens, and robbery ashore in connection with a piratical cruise or enterprise.

Finally, in a single paragraph of each Complaint,[15] plaintiffs allege violation of 18 U.S.C. § 371, the general criminal conspiracy statute.

We demonstrate below that plaintiffs have no implied private cause of action under these United States laws.

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13 Paragraphs 122-124 of Civil Action No. 81-0563 and paragraphs 129-131 of Civil Action No. 81-0564.

14 Paragraphs 125-128 of Civil Action No. 81-0563 and paragraphs 132-135 of Civil Action No. 81-0564.

15 Paragraph 129 of Civil Action No. 81-0563 and paragraph 136 of Civil Action No. 81-0564.

First, however, we note several fundamental defects in plaintiffs' jurisdictional allegations. With respect to the allegations that defendants have acted illegally against a nation, the cited provisions of Title 18 require the following: a conspiracy to injure *specific* foreign government property (no such conspiracy against specific foreign government property is pleaded); or possession of property or papers intended to violate a U.S. statute (also not pleaded). Thus, even if there were a private cause of action under these statutes, plaintiffs' claims would not fall within it.

With respect to the piracy allegations, these are *per se* defective because piracy cannot exist when a person acts with authority of a sovereign state. *Davison v. Seal-Skins,* Fed. Case No. 3,661 (C.C.N.Y. 1835). Since plaintiffs allege the active participation of the State of Libya, no piracy under United States law can be shown. Further, the primary anti-piracy allegations require either an act of piracy on the high seas (18 U.S.C. §§ 1651, 1652) or robbery ashore (*Id.* § 1660). However, plaintiffs plead neither high seas piracy nor robbery.[16] Again, these allegations should be dismissed out of hand.

Finally, an implied private cause of action for conspiracy (*i.e.*, arising under 18 U.S.C. § 371) can exist only if there is a private cause of action arising under one of the other cited code provisions. *Fiorino v. Turner,* 476 F. Supp. 962 (D. Mass. 1979). Since plaintiffs have no pri-

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[16] In addition, Sections 1652 and 1654 require the pirates to be citizens of the United States. No such allegation is, or could be, made in the Complaints.

vate cause of action under the other code provisions cited in Count IV, there similarly is no claim under Section 371.

(b) *No private Cause of Action for Civil Remedies Exist Under the Statutes Cited by Plaintiffs.*

The Supreme Court in recent years has set forth explicit guides by which lower courts may determine whether Congress intended to create an implied private right of action under federal law where none is specifically provided. The Court first articulated these tests in *Cort v. Ash,* 422 U.S. 66 (1975), which concerned whether a shareholder had a cause of action for a company's alleged violation of 18 U.S.C. § 610, a criminal statute prohibiting corporate political contributions. The four-part test for Congressional intent enunciated in *Cort v. Ash* is as follows:

— First, whether plaintiff is a member of a class for whose special benefit the federal statute was enacted;

— Second, whether there is any evidence of legislative intent, explicit or implicit, to create or deny a private remedy;

— Third, whether the underlying purposes of the statutory scheme are consistent with implying a remedy for the plaintiff; and

— Fourth, whether the cause of action is one traditionally relegated to state law so that it would be inappropriate to infer a federal cause of action.

422 U.S. at 78. In *Cort,* the Court declined to imply a private right of action, with the Court noting, in particular, the complete lack of indication in the statute that civil enforcement of any kind was intended by Congress.

The Supreme Court in other recent cases has emphasized that the first three *Cort* factors are the most important and that a cause of action may not be implied if the plaintiff is not a member of the protected class and if there is no evidence of a Congressional intention to create a private right of action. *See Universities Research Ass'n, Inc. v. Couter,* 49 U.S.L.W. 4354 (U.S. April 6, 1981); *Transamerica Mortgage Advisors, Inc. v. Lewis,* 444 U.S. 11 (1979); *Touche Ross & Co. v. Redington,* 442 U.S. 560 (1979); *Cannon v. University of Chicago,* 441 U.S. 677 (1979). Indeed, the Supreme Court has made clear in these recent decisions that courts must be extremely cautious in employing a private cause of action under federal law where Congress has failed to provide expressly for such private relief.

In the instant case, the *Cort v. Ash* criteria lead inescapably to the conclusion that *no* private action exists in plaintiffs' favor. First, with respect to 18 U.S.C. §§ 956 and 960, the clear purpose of the statutes is to avoid injury to a foreign government, through attack on its property or otherwise, and thus to protect American foreign policy interests. Plaintiffs, who are private citizens residing abroad, clearly do not fall within any special class of persons whom these statutes were designed to protect. Second, there is not the slightest indication of a Congressional intention to imply a private cause of action. As stated in *Cort v. Ash,* there is "nothing more than a bare criminal statute, with absolutely no indication that civil enforcement of any kind was available to anyone." 422 U.S. at 79-80. Third, private enforcement will not serve the underlying purposes of the criminal statutes. These statutes involve foreign policy concerns where private in-

tervention could, in fact, be adverse to American governmental interests. In short, there is *no* possible basis to infer a private cause of action under Sections 956 and 960.

Section 957 merits a slightly different inquiry but the same result. The statute clearly is designed to protect the U.S. government and its laws, as it prohibits any person from aiding a foreign government to violate U.S. laws. There is no basis for believing that plaintiffs constitute a class of persons that Section 957 was designed to protect. Further, there again is no indication in the statute that a private cause of action was to be inferred. Finally, a private cause of action could not assist in enforcement of Congressional purposes. Since the statute is designed to protect the American government, government enforcement clearly suffices.

Finally, the piracy statutes (18 U.S.C. §§ 1651-52, 1654, 1661) also do not provide plaintiffs a private cause of action. The clear purpose of the statutes is to protect commerce and life on the high seas and to protect against robbery in connection with such high seas enterprises. Plaintiffs' claims, however, concern an alleged terrorist attack which is outside the scope of the piracy prohibitions. Thus, plaintiffs are not within the class of persons designed to be protected by the stautes. Further, those statutes are completely silent as to any Congressional intention to provide a private cause of action. Plaintiffs' claims are in reality no more than common law tort allegations traditionally cognizable under state law. Thus, not only do the piracy statutes fail even to address the substance of plaintiffs' claims, but there also is no need or justification for inferrinng a federal cause of action under those statutes.

In sum, all of plaintiffs' "federal law" claims, in fact, do not involve federal law at all. Instead, these claims, as pleaded in Count I of each Complaint, are common law intentional tort claims. "[I]t is not to be supposed that Congress, in exercise of its regulatory authority, intends to shift from state to federal courts large bodies of private litigation absent some reasonably reliable evidence that this was its intention." 1 Moore's Federal Practices ¶ O.62[2.-2], at 668 (2d ed. 1980). Since there is no such Congressional intention demonstrated in these cases, Section 1331 jurisdiction cannot be sustained.

2. *Plaintiffs Have No Private Right of Action Under the Treaties of the United States.*

Count III of each Complaint is entitled "Tortious Actions in Violation of the Treaties of the United States." Plaintiffs have broadly alleged that the NAAA has violated the "treaties" enumerated in Count III and thus assert that they have claims "arising under" the treaties of the United States so as to confer subject matter jurisdiction on this Court.

(a) *The Defects in Plaintiffs' Count III Treaty Theory.*

The deficiencies in plaintiffs' "treaty theory" are numerous. First, as explained earlier, these actions do not involve any pivotal or substantial question concerning the application or interpretation of these "treaties." Thus, the actions do not arise under these treaties and this Court lacks Section 1331 subject matter jurisdiction.

Second, Section 1331 requires that claims arise under

United States *treaties*. Many of the so-called "treaties" cited by plaintiffs are not, in fact, treaties at all. Indeed, eight of the thirteen "treaties" are not presently treaty obligations of the United States, as documented by the United States Department of State in its annual publication entitled *Treaties in Force*.[17] Accordingly, no Section 1331 jurisdiction can arise from these defective allegations.

Finally, the actual treaties cited by plaintiffs do not provide them with any judicially enforceable rights. A treaty is a contract between the United States and other signatories of the treaty. When ratified, a treaty becomes the law of the United States, and, as such, *may* confer rights capable of judicial enforcement. *However, the general rule is that treaties do not confer any privately enforceable rights* and thus are deemed to be "executory" with respect to the rights of private individuals. Accordingly, except where a treaty is self-executing (and this is generally *not* the rule), Congress must implement the treaty though legislation before the treaty gives rise to a private right of action. *E.g., Mannington Mills, Inc. v. Congoleum Corp.*, 595 F.2d 1287, 1298 (3d Cir. 1979); *Diggs v Richardson*, 555 F.2d 848, 850-51 (D.C. Cir. 1976); *Dreyfus v. Von Finck*, 534 F.2d 24, 29-30 (2d Cir.), *cert. denied*, 429 U.S. 835 (1976);

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17 The "treaties" which are not, in fact, U.S. treaty obligations are those set forth in paragraphs 103, 105-108, and 110-112 of the Complaint in Civil Action No. 81-0563 and paragraphs 110, 112-115 and 117-119 of the Complaint in Civil Action No. 81-0564. *See* Treaties Affairs Staff, Office of the Legal Adviser, Department of State, Treaties in Force (1979).

Chapalain Compagnie v. Standard Oil Co. (Indiana), 467 F. Supp. at 184.

There is no precise rule for determining whether a particular treaty constitutes an exceptional case such that it is self-executing and provides a person with privately enforceable rights for its violation. However, there are certain interpretive guides which courts rely upon to determine whether a treaty is executory or self-executing. First, if a treaty calls for each country to enact legislation concerning the treaty, it universally is held to be executory and thus no private rights are conferred by it. *See United States v. Postal*, 589 F.2d 862, 876-77 (5th Cir.), *cert. denied*, 444 U.S. 832 (1979).

Second, courts look to the words of a treaty to determine whether it evidences an intent to confer judicially enforceable rights upon individuals or whether it addresses governmental actions. For example, in *Diggs v. Richardson*, 555 F.2d 848 (D.C. Cir. 1976), the court considered whether a United Nations resolution[18] calling for nations to abstain from trade and other contacts with Namibia and South Africa gave rise to an implied right of action. The resolution stated that such contacts might "entrench" white authority over those areas. The court found the resolution executory:

> [W]e find that the provisions here in issue were not addressed to the judicial branch of our government. They do not by their terms confer rights upon individual citizens; they call upon governments to take cer-

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[18] The court assumed without deciding that the U.N. Resolution constituted a binding American obligation and then concluded that the Resolution was entirely executory. *See* 555 F.2d at 850-51.

> tain action. The provisions deal with the conduct of our foreign relations, an area traditionally left to executive discretion. . . . The Resolution does not provide specific standards. The "entrenchment" standard of the Resolution, while possibly of such a nature that it might be elaborated by an international tribunal, is essentially the kind of standard that is rooted in diplomacy and its incidents, rather than in conventional adjudication, and is foreign to the general experience and function of American courts. In the absence of contrary indication in the international legislative history, and in the absence of domestic legislation evincing an intention for judicial enforcement, we conclude that the provisions of Resolution 301 involved here do not confer on individual citizens rights that are judicially enforceable in American domestic courts.

555 F.2d at 851 (footnotes deleted). Similarly, in *Sei Fujii v. State,* the California Supreme Court stated:

> In order for a treaty provision to be operative without the aid of implementing legislation and to have the force and effect of a statute, it must appear that the framers of the treaty intended to prescribe a rule that, standing alone, would be enforceable in the courts.

242 P.2d 617, 620 (1952).[19]

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[19] The approach in *Diggs v. Richardson* and *Sei Fujii v. State,* in focusing on the intention manifested in the treaty, is similar to that of the Supreme Court in recent cases (discussed above) regarding whether an implied right of action arises under various federal statutes. *See, e.g., Touche Ross & Co. v. Redington,* 442 U.S. 560 (1979); *Cort v. Ash,* 422 U.S. 66 (1975). Accordingly, under *Diggs, Sei Fujii,* and these Supreme Court decisions, it is appropriate for this Court to inquire whether the treaties in question manifest a clear intention that private rights be created and

(Continued on next page)

(b) *No Private Cause of Action Arises Under the "Treaties" Cited by Plaintiffs.*

With the foregoing overview, we now review the "treaties" alleged to have been violated in Count III of each Complaint.[20] In each instance, these treaties confer *no* judicially enforceable rights such that plaintiffs' claims arise under these treaties. For convenience of the Court, we have attached as Exhibits 2-14 hereto the "treaties" cited by plaintiffs.[21]

Paragraphs 102 and 109. Alleged violation of Geneva Convention for the Protection of Civilian Persons in Time of War, Aug. 12, 1949. (Exhibit 2). This Convention is clearly executory, since in Article 146 it expressly calls for participating nations to enact legislation to implement its provisions. Indeed, one court has explicitly held this Convention to be executory. *See Huynh Thi Anh v. Levi,* 586 F.2d 625, 629 (6th Cir. 1978). Accordingly, no private right of action arises under the treaty. *See, e.g., United States v. Postal,* 589 F.2d at 876-77.

(Continued from previous page)

whether, if so, plaintiffs are within that special class of persons intended to be protected by the treaty. Since plaintiffs cannot demonstrate that the treaties were designed to provide a private right of action to any person, their reliance on these treaties for federal jurisdiction cannot be sustained.

20 The dual paragraph numbers listed hereafter in the text are first from the Complaint in Civil Action No. 81-0563 and second from the Complaint in Civil Action No. 81-0564. For purposes of this discussion, we have included all "treaties," including those which are not, in fact, treaty obligations of the United States.

21 Many of the treaties cited by plaintiffs are quite lengthy. Accordingly, in most instances the exhibits contain only those portions of the treaties cited by plaintiffs in the Complaints.

Paragraphs 103 and 110. Alleged violation of Protocols I and II of Geneva Convention of August 12, 1949 (June 7, 1977). (Exhibit 3). First, these Protocols are not treaties. Further, there is no evidence that the federal courts were to be involved in enforcement of these Protocols. Indeed, the establishment of an International Fact-Finding Commission (Protocol I, Article 90) belies any such intention. The Protocols are directed to actions agreed to be taken by nations and thus do not evidence any intention to establish judicially enforceable individual rights. That would occur only with implementing legislation by each party thereto. *See Diggs v. Richardson,* 555 F.2d at 851.

Paragraphs 104 and 111. Alleged violation of Articles 1 and 2 of the United Nations Charter. (Exhibit 4). As courts have held, these provisions of the United Nations Charter are not self-executing and thus do not vest plaintiffs with any legal rights which may be asserted in court. *Pauling v. McElroy,* 164 F. Supp. 390, 393 (D.D.C. 1958), *aff'd,* 278 F.2d 252 (D.C. Cir.), *cert. denied,* 364 U.S. 835 (1960); *see Dreyfus v. Von Finck,* 534 F.2d at 30; *People of Saipan v. United States Department of Interior,* 502 F.2d 90, 100-03 (9th Cir. 1974) (Trask, J., concurring), *cert. denied,* 420 U.S. 1003 (1975); *Sei Fujii v. State,* 38 Cal. 2d 718, 242 P.2d 617 (1952).

Paragraphs 105 and 112. Alleged violation of U.N. General Assembly Resolution 2625 (XXV), Oct. 24, 1970, Declaration of Principles of International Law concerning Friendly Relations and Cooperation Among States. (Exhibit 5). This U.N. Resolution is not a treaty obliga-

tion of the United States and, further, is merely a general statement concerning relations among members of the United Nations. It evidences no intention to confer judicially protected rights on any individuals. *E.g., Diggs v. Richardson,* 555 F.2d at 851.

Paragraphs 106 and 113. Alleged violation of U.N. General Assembly Resolution 217A, the Universal Declaration of Human Rights. (Exhibit 6). This U.N. Resolution is not a U.S. treaty obligation. It is merely a general statement concerning human rights, evidencing no intention that the Resolution itself would grant a private judicial remedy to any individual. *Huynh Thi Anh v. Levi,* 586 F.2d at 629; *see Diggs v. Richardson.* Indeed, Article 8 clearly specifies that persons must look not to the Resolution but to each nation's other laws for judicially enforceable rights:

> Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him *by the constitution or by law.*

Resolution 217A, Article 8 (emphasis supplied). Such reference to national laws is a clear indication of the executory nature of this Resolution. *See Mannington Mills, Inc. v. Congoleum Corp.,* 595 F.2d at 1299.

Paragraphs 107 and 114. Alleged violation of U.N. General Assembly Resolution 2200A, the International Covenant on Civil and Political Rights (Exhibit 7). This Resolution is not a U.S. treaty obligation. Further, Article 2 of this Resolution expressly calls for each state to enact legislation to implement the Resolution. Thus, it is executory and confers no rights on plaintiffs. *Man-*

nington Mills, Inc. v. Congoleum Corp., 595 F.2d at 1298-99; *United States v. Postal*, 589 F.2d at 876-77.

Paragraphs 108 and 115. Alleged violation of U.N. General Assembly Resolution 2675 concerning Basic Principles for the Protection of Civilian Populations in Armed Conflicts. (Exhibit 8). This, again, is only a general declaration of principles, not amounting to a U.S. treaty, concerning the avoidance of civilian injuries during armed conflicts between warring states. There is no indication whatsoever that it is intended to confer judicially protected private rights. *See Diggs v. Richardson.*

Paragraphs 109 and 116. Alleged violation of the Hague Conventions of 1899 and 1907. (Exhibit 9). The Second Circuit recently ruled that no private right of action may be based on the Hague Conventions. *Dreyfus v. Von Finck*, 534 F.2d at 30.

Paragraphs 110 and 117 Alleged violation of U.N. General Assembly Resolution 260A concerning the Crime of Genocide. (Exhibit 10). This Resolution is not a U.S. treaty and, at any rate, is not applicable because these cases do not involve genocide. Further, Article V of this Resolution specifically calls for each state to enact implementing legislation. Accordingly, this Resolution is executory and provides no private right of action. *United States v. Postal*, 589 F.2d at 876-77.

Paragraphs 111 and 118. Alleged violation of U.N. General Assembly Resolution 1386 concerning the Declaration of the Rights of the Child. (Exhibit 11). This Resolution, which is not a U.S. treaty, is merely a general declaration of principles, evidencing no intention to

create, by its terms, any judicially enforceable rights. Indeed, in the Preamble it calls upon states to observe the stated principles "by legislative and other measures," an indication it was directed to actions to be taken by states, not individuals. *See Diggs v. Richardson,* 555 F.2d at 851. Thus it is clearly executory and confers no private right of action upon plaintiffs. *See United States v. Postal,* 589 F.2d at 876-77. Moreover, in a companion resolution (No. 1387), the General Assembly requested members to *publicize* the text of the Declaration. Thus, it is clear that this "treaty" was not intended to create privately enforceable rights.

Paragraphs 112 and 119. Alleged violation of the American Convention of Human Rights. (Exhibit 12). The United States is not even a signatory to this Convention (Exhibit 12 at 23), and therefore plaintiffs' reliance upon it to confer jurisdiction upon this Court is clearly without foundation. Moreover, in Article 28, the Convention expressly calls on members to enact legislation to implement its principles. Accordingly, it is executory and provides no private cause of action. *See United States v. Postal.*

Paragraphs 113 and 120. Alleged violation of Geneva Convention Relative to Treatment of Prisoners of War. (Exhibit 13). Aside from the fact that this Convention, on its face, deals with prisoners of war and not with the facts alleged in these cases, Article 129 of the Convention specifically calls for implementing legislation. Thus, the Convention is executory and provides no cause of action for plaintiffs. *See United States v. Postal.*

Paragraphs 114 and 121. Alleged violation of the OAS Convention to Prevent and Punish Acts of Terrorism.

(Exhibit 14). This Convention, on its face, has no application to these cases since it is primarily an extradition agreement. Further, the Convention, in repeated reference to members' laws *(e.g.,* Articles 1, 3 and 8), evidences the clear intention that this Convention be entirely executory. Accordingly, no private cause of action arises under the Convention. *See United States v. Postal.*

In short, as demonstrated above, none of the "treaties" upon which plaintiffs rely in Count III of the Complaints provide any judicially protected rights. Accordingly, plaintiffs' causes of action do not "arise under" the treaties of the United States, as required for Section 1331 jurisdiction.

B. *This Court Has No Subject Matter Jurisdiction Under 28 U.S.C. § 1330.*

Plaintiffs have also alleged that this Court has subject matter jurisdiction under the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§ 1330, 1602-11. This allegation must be rejected summarily.

First, 28 U.S.C. § 1330 confers subject matter jurisdiction on federal district courts only for damage claims *against a foreign state.* This statute does not provide subject matter jurisdiction over plaintiffs' claims against the NAAA which, of course, is not a foreign state.

Second, Section 1330 does not even apply to plaintiffs' claims against other defendants which are foreign states. Section 1330 grants subject matter jurisdiction only as to those few claims for which there is no immunity under 28 U.S.C. §§ 1605-07. Sovereign immunity for tort claims is still in effect under this statute, except where personal

injury or death occurs *in the United States. Id.* § 1605(a)(5); *see Letelier v. Republic of Chile,* 488 F.Supp. 665, 674 (D.D.C. 1980). Since it is undisputed in this instance that *plaintiffs' injuries occurred in Israel,* this Court has no Section 1330 jurisdiction over any defendant.

C. *This Court Has No Subject Matter Jurisdiction Under 28 U.S.C. §1332.*

Nor does this Court have jurisdiction of these actions under 28 U.S.C. § 1332, which provides for federal court jurisdiction where the parties are of diverse citizenship. The express terms of the statute and long-standing judicial interpretation make clear that Section 1332 cannot be used by plaintiffs herein to confer subject matter jurisdiction on this Court.

Under Section 1332, federal district courts have original jurisdiction of civil actions where the matter in controversy exceeds $10,000, and the action is between one of four specific sets of parties:

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; [or]

(4) a foreign state . . . as plaintiff and citizens of a State or of different States.

28 U.S.C. § 1332(a).

First, plaintiffs have failed even to allege the mandatory jurisdictional facts concerning the defendants. The Complaints contain no averments whatsoever as to the

citizenship of any defendants. This glaring defect in plaintiffs' pleadings is alone sufficient to require dismissal of these actions. *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936); *Cameron v. Hodges*, 127 U.S. 322 (1888). Moreover, even if one could ignore this fatal defect, it is clear that the combination of plaintiffs and defendants in these cases fails to fall within any of the permissible categories set forth in Section 1332. Therefore, diversity jurisdiction cannot be sustained.

It is well established that a federal court lacks jurisdiction under Section 1332 unless there is complete diversity between plaintiffs and defendants. *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806). *Accord, City of Indianapolis v. Chase National Bank*, 314 U.S. 63 (1941); *Wigand v. Flo-Tek, Inc.*, 609 F.2d 1028 (2d Cir. 1979), *amended* (1980); *Belle View Apartments v. Realty ReFund Trust*, 602 F.2d 668 (4th Cir. 1979); C. Wright, Handbook of the Law of Federal Courts § 25, at 82 (2d ed. 1970). It is equally well established that the complete diversity requirement prohibits federal court jurisdiction if there are aliens—that is, persons or entities who are not United States citizens—on both sides of the litigation. *Montalet v. Murray*, 8 U.S. (4 Cranch) 46 (1807); *Field v. Volkswagenwerk, AG*, 626 F.2d 293, 296 (3d Cir. 1980) ("[The complete diversity] requirement pertains to suits between aliens as well as to suits between citizens."); *IIT v. Vencap, Ltd.*, 519 F.2d 1001, 1015 (2d Cir. 1975) ("Diversity jurisdiction under 28 U.S.C. § 1332 is defeated by the presence of aliens both as plaintiffs and as defendants."); *Ed and Fred, Inc. v. Puritan Marine Insurance Underwriters Corp.*, 506 F.2d 757 (5th Cir. 1975); *Dassigienis v. Cosmos Carriers & Trading Corp.*, 442 F.2d 1016 (2d Cir. 1971);

Compagnie Nationale Air France v. Castano, 358 F.2d 203 (1st Cir. 1966); *Ex parte Edelstein,* 30 F.2d 636, 638 (2d Cir.), *cert. denied,* 279 U.S. 851 (1929) ("an alien may not sue an alien in a federal court"); *Fosen v. United Technologies Corp.,* 484 F.Supp. 490, 495 (S.D.N.Y. 1980) ("[T]his action is between two foreign litigants and so diversity jurisdiction cannot be sustained."); *Lavan Petroleum Co. v. Underwriters at Lloyds,* 334 F. Supp. 1069 (S.D.N.Y. 1971).

In the instant actions, all but seven plaintiffs are citizens of foreign states.[22] It is thus clear that this Court's jurisdiction cannot be based on subsection (a) (1) of Section 1332, since these actions are not between citizens of different states of the United States.

Similarly, plaintiffs cannot avail themselves of subsections (a) (2) or (a) (3) of Section 1332 because they fail to satisfy the mandatory requirement of complete diversity. Although plaintiffs do not allege the citizenship of any defendants, it is nonetheless clear that, at the very least, two defendants—the Libyan Arab Republic and the Palestine Liberation Organization—are ***not*** citizens of the United States. Because there are non-United States citizens among both plaintiffs and defendants, and thus there are aliens on both sides of the litigation, there can be no diversity jurisdiction. *Montalet v. Murray,* 8 U.S. (4

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[22] In Civil Action No. 81-0563, all plaintiffs are alleged to be citizens of Israel or the Netherlands except one—Hanoch Tel-Oren, who is a U.S. citizen residing in Israel. In Civil Action No. 81-0564, all plaintiffs are alleged to be Israeli citizens or citizens of the Netherlands except six members of the Tel-Oren family, who are all U.S. citizens residing in Israel.

Cranch) 46 (1807); *IIT v. Vencap, Ltd.*, 519 F.2d 1001 (2d Cir. 1975); *Ed and Fred, Inc. v. Puritan Marine Insurance Underwriters Corp.*, 506 F.2d 757 (5th Cir. 1975); *Compagnie National Air France v. Castano*, 358 F.2d 203 (1st Cir. 1966); *Ex parte Edelstein*, 30 F.2d 636 (2d Cir.), *cert. denied*, 279 U.S. 851 (1929). As one district court held in denying jurisdiction over a case brought by six plaintiffs, two of whom were foreign corporations, against several foreign corporate defendants:

> To sustain jurisdiction under [subdivision (a) (2) of Section 1332], it is an essential prerequisite that there be complete diversity of citizenship—that each and every party plaintiff be of different citizenship from all parties defendant . . . Complete diversity is negated however by the presence as plaintiffs of the two alien corporations . . . [Subdivision (a) (3) is also inapplicable because defendants] are not citizens of a foreign country.

Lavan Petroleum Co. v. Underwriters at Lloyds, 334 F. Supp. 1069, 1071 (S.D.N.Y. 1971). *Accord, Field v. Volkswagenwerk AG*, 626 F.2d 293, 296 (3d Cir. 1980) ("The [complete diversity] principle has been applied to deny jurisdiction in an action by an alien against citizens of a states and another alien.").

Finally, it is obvious that plaintiffs do not fall within subsection (a) (4) of Section 1332, since that subsection applies only to cases in which a foreign state is the *plaintiff*.

Therefore, because the parties to these cases do not fall within any of the permissible categories of Section 1332, and because, in any event, there is a lack of complete diversity between plaintiffs and defendants, this Court does not have jurisdiction of these actions under Section 1332.

In addition, plaintiffs cannot rely upon diversity jurisdiction because several plaintiffs are alleged to be United States citizens residing in Israel.[23] Section 1332 explicitly bases the diversity requirements upon the *state* citizenship of the parties. If a party is an American citizen who is not also a citizen of a particular state, it is well established that diversity jurisdiction does not lie. As Professor Wright explains:

> State citizenship is necessary for diversity jurisdiction. A person may be a citizen of the United States but domiciled abroad. Such a person is not a citizen of any state, and cannot sue or be sued in federal court on that basis.

C. Wright, Handbook of the Law of Federal Courts, § 24, at 80 (2d ed. 1970). *Accord, Sadat v. Mertes,* 615 F.2d 1176, 1180 (7th Cir. 1980) ("settled precedent establishes that a citizen of the United States who is not also a citizen of one of the United States may not maintain suit under [28 U.S.C. § 1332(a)(1)]."); *Smith v. Carter,* 545 F.2d 909 (5th Cir.), *cert. denied,* 431 U.S. 955 (1977); *Meyers v. Smith,* 460 F. Supp. 621, 624 (D.D.C. 1978); *Mohr v. Allen,* 407 F. Supp. 483, 487 (S.D.N.Y. 1976) ("A nonresident United States citizen does not satisfy the jurisdictional re-

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[23] In Civil Action No. 81-0563, plaintiff Hanoch Tel-Oren, who purports to bring the action on behalf of Imry Tel-Oren, "is a citizen of the United States" (Complaint in Civil Action No. 81-0564, ¶ 4), whose residence is Omer nir Beersheba, Israel. (Complaint in Civil Action No. 81-0563, Caption). Similarly, in Civil Action No. 81-0564, plaintiffs Hanoch Sharona, Adiel, Reviva, Coronet and Nir Tel-Oren, are all United States citizens. They all reside in Omer nir Beersheba, Israel, except for Nir Tel-Oren who resides in Herzelya, Israel. (Complaint in Civil Action No. 81-0564, Caption and ¶ 4).

quirements set out for a diversity action"); *Kaufman and Broad, Inc v. Gootrad,* 397 F. Supp. 1054, 1055 (S.D.N.Y. 1975); *Hernandez v. Lucas,* 254 F. Supp. 901 (S.D. Tex. 1966); *Van der Schelling v. U.S. News & World Report, Inc.,* 213 F. Supp. 756 (E.D. Pa.), *aff'd per curiam,* 324 F.2d 956 (3d Cir. 1963), *cert. denied,* 377 U.S. 906 (1964). State citizenship for purposes of the diversity statute is based upon one's domicile. *Gilbert v. David,* 235 U.S. 561 (1915); *Chicago & N.W. Ry. v. Ohle,* 117 U.S. 123 (1886). In the case of the U.S. citizen plaintiffs in these actions, that domicile is Israel rather than one of the United States. *See* note 23, above. Thus, it is clear from the face of the Complaints that there can be no jurisdiction of these actions based on Section 1332 because certain plaintiffs are not "citizens of a State."

Nor can the United States citizen plaintiffs qualify for diversity jurisdiction as "citizens or subjects of a foreign state" under Sections 1332(a)(2) or (a)(3) based upon their residence in Israel. It is well established that for diversity purposes, a United States citizen who resides abroad cannot be a citizen or subject of the country in which he resides unless he renounces his United States citizenship. *Pemberton v. Colonna,* 290 F.2d 220 (3d Cir. 1961). *Accord, Smith v. Carter,* 545 F.2d 909 (5th Cir.), *cert. denied,* 431 U.S. 955 (1977); *Kaufman and Broad, Inc. v. Gootrad,* 397 F. Supp. 1054 (S.D.N.Y. 1975); *Haggerty v. Pratt Institute,* 372 F. Supp. 760 (E.D.N.Y. 1974); *Hernandez v. Lucas,* 254 F. Supp. 901 (S.D. Tex. 1966); *Van der Schelling v. U.S. News & World Report, Inc.,* 213 F. Supp. 756, 761-62 (E.D. Pa.), *aff'd per curiam,* 324 F.2d 956 (3d Cir. 1963),*cert. denied,* 377 U.S. 906 (1964). Ac-

cordingly, the NAAA submits that this Court does not have jurisdiction over these actions based on Section 1332 not only because there is not complete diversity, but also because plaintiffs include American citizens residing abroad. As Professor Moore notes in summarizing the law in this point:

> An American citizen who is domiciled in a foreign country is neither a citizen of a state nor a citizen or subject of the country of his inhabitance. Thus, he cannot sue or be sued on the basis of diversity jurisdiction in the federal courts.

1 Moore's Federal Practice ¶ 0.74[4], at 708.1 (2d ed. 1980).

D. *28 U.S.C. § 1350 Does Not Grant Subject Matter Jurisdiction Over Plaintiffs' Claims Against the NAAA.*

In paragraph 1 and in Count II of each Complaint, plaintiffs have alleged that subject matter jurisdiction exists under 28 U.S.C. § 1350. This jurisdictional allegation cannot be sustained against the NAAA because all plaintiffs are not aliens and because the NAAA has committed no tortious acts such as to invoke Section 1350 jurisdiction.

Section 1350 is explicit in its jurisdictional requirements:

> The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.

Thus, under Section 1350, this Court must answer affirmatively all three of the following questions:

— Is the plaintiff an alien?

— Is each defendant properly alleged to have committed a tort?

— Is the tort of each defendant a violation of the law of nations or a U.S. treaty?

Plaintiffs clearly do not satisfy the first two criteria and hence jurisdiction cannot be founded on Section 1350. The Court thus need not determine whether the torts alleged to have been committed were "in violation of the law of nations or a treaty of the United States."

First, the plaintiffs are not all aliens. Rather, as noted above, in each case at least one United States citizen is suing the defendants. Section 1350, by its plain limitation of plaintiffs to aliens, denies this Court subject matter jurisdiction where non-aliens are plaintiffs. This is similar to the requirement, discussed in the preceding section, that under the diversity statute, *complete* diversity must exist. Accordingly, Section 1350 cannot provide subject matter jurisdiction with respect to either of these actions.

Second, plaintiffs have not alleged any act by the NAAA which would constitute a tort against plaintiffs, much less a violation of the law of nations or the treaties of the United States. Plaintiffs allege that it was the El Fatah faction of the PLO, acting *"at the direction of the PLO,"* which carried out the March 11, 1978 attack.[24] Thus, plaintiffs plainly do not charge that the NAAA did, in fact, cause any injury to plaintiffs or even that such injury was caused at the direction of the NAAA.

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[24] See Complaint, Civil Action No. 81-0563, ¶ 32; Complaint, Civil Action No. 81-0564, ¶ 40.

Plaintiffs' Section 1350 jurisdiction theory, then, must rest on the broad allegation (which is totally false in any event) that the NAAA somehow conspired, through alleged planning, funding, and equipment procurement, to carry out the actual attack. There are several shortcomings, however, in this effort to invoke this Court's jurisdiction. First, a conspiracy to commit an intentional tort does not, in fact, constitute a "tort."[25] Particularly where, as here, the defendant NAAA clearly never had any role in the conduct (*i.e.*, the attack) which comprised the tortious act, an allegation of conspiracy cannot meet the Section 1350 requirement that the defendant have committed a tort. Moreover, none of the acts alleged to have been performed by the NAAA—devising a plan, providing funds, procuring equipment—could themselves be said to constitute a tort. Since Section 1350 requires, *for jurisdictional purposes,* that *the NAAA* have committed a tort, and since none of the acts alleged to have been performed by the NAAA constitute a tort, there is no Section 1350 jurisdiction over the NAAA.

The Section 1350 requirement that a "tort" be committed by the defendant is a critical jurisdictional fact in these cases. As demonstrated in the attached Affidavit of Joseph D. Baroody (Exhibit 1), the NAAA never planned, funded or procured equipment for this or any

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[25] Civil conspiracy is not in itself an actionable tort. It is well established that "the gist of the civil action of conspiracy is the . . . tortious act complained of." *Burns v. Spiller,* 4 F.R.D. 299 (D.D.C. 1945), *aff'd,* 161 F.2d 377 (D.C. Cir.), *cert. denied,* 332 U.S. 792 (1947). *See also Nalle v. Oyster,* 230 U.S. 165 (1913); 16 Am. Jur. 2d Conspiracy, § 49; Prosser, Handbook of the Law of Torts, § 47, at 293 (4th ed. 1971).

other allegedly terrorist incident. Plaintiffs' allegations in the Complaints do not, in fact, allege specific tortious conduct by the NAAA. Rather, plaintiffs' allegations are nothing more than broad, generalized "boilerplate"—indeed identical bald allegations are made against the NAAA, the Palestine Information Office, and the Palestine Congress of North America. Moreover, the Complaint is not verified and the boilerplate allegations are not even dignified with recitations of "on information and belief"—suggesting, indeed, that those allegations are based on idle fantasy and pure speculation.[26]

Given the grossly inaccurate pleading in each Complaint, plaintiffs should *not* be permitted to impose subject matter jurisdiction on this Court without some scintilla of evidence demonstrating possible NAAA involvement in the incident in question. Just as reference to a federal statute does not create jurisdiction under Section 1331, mere generalized and conclusory allegations of tort, without *any* tangible connection to the named defendant, cannot confer jurisdiction under Section 1350.

We recognize that plaintiffs cannot be expected to present their entire case at this time. However, the NAAA contends that there is simply no basis whatsoever for the naming of the NAAA as a defendant in these actions, as documented in Mr. Baroody's Affidavit. The

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[26] The allegations clearly cannot be true under any possible set of circumstances since the Palestine Information Office was not even organized until March 15, 1978, and the Palestine Congress of North America was not created until September, 1980, both after the incident at issue. Entities which did not even exist on March 11, 1978, could not possibly be liable as plaintiffs have alleged.

NAAA and this Court, therefore, are entitled to a demonstration *now* that plaintiffs *do* have a tangible basis for having named the NAAA as a defendant. If they have no such basis, then Section 1350 jurisdiction surely cannot be sustained and appropriate sanctions will be in order.[27]

III. *Plaintiffs' Claims are Barred by the Statute of Limitations.*

The NAAA's Motion to Dismiss must also be granted because the applicable statute of limitations has run on plaintiffs' claims against the NAAA. Under the principles of *Erie Railroad Co. v. Thompkins,* 304 U.S. 64 (1938), as applied to the federal courts in the District of Columbia, this Court must look to District of Columbia law to determine which statute of limitations to apply to plainiffs' claims. *Steorts v. American Airlines, Inc.,* No. 79-1215 (D.C. Cir., filed Feb. 19, 1981) *See also Lee v. Flintkote Co.,* 593 F.2d 1275 (D.C. Cir. 1979). It is well established under District of Columbia law that "a limitation on the time of [bringing a] suit is procedural and is governed by the law of the forum." *Kaplan v. Manhattan Life Insurance Co.,* 109 F.2d 463, 465-66 (D.C. Cir. 1939). *Accord, Hodge v. Southern Ry.,* 415 A.2d 543 (D.C. 1980); *May Department Stores Co., Inc. v. Devercelli,* 314 A.2d 767 (D.C. 1973). Since a District of Columbia court would apply its own statute of limitations to an action before it, regardless of where the cause of action might have arisen, it is clear that this Court similarly must apply the D.C. statute of limitations to plaintiffs' claims. *Steorts v. American Airlines, Inc.,* No. 79-1215 (D.C. Cir., filed Feb. 19, 1981).

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[27] *See, e.g.,* Fed. R. Civ. P. 11.

Section 12-301 of the D.C. Code provides that an action "for libel, slander, assault, battery, mayhem, wounding, malicious prosecution, false arrest or false imprisonment" must be brought within one year "from the time the right to maintain the action accrues." D.C. Code § 12-301(4). It is plain that all the claims asserted by plaintiffs in these actions are time-barred under this statute.

The incident upon which plaintiffs' claims are based allegedly occurred on March 11, 1978, and plaintiffs (or the decedents whom plaintiffs in Civil Action No. 81-0563 purport to represent) suffered the injuries of which they complain on that date.[28] Thus, the right to maintain these actions accrued on March 11, 1978. These lawsuits were not filed, however, until March 10, 1981, nearly three years after the alleged causes of action had accrued. Accordingly, these actions should be dismissed because the applicable one-year statute of limitations had long since expired prior to the initiation of these lawsuits.

Count I of each of the Complaints purports to assert a cause of action based on "the intentional torts of assault, battery, false imprisonment, intentional infliction of mental distress and/or intentional infliction of cruel, inhuman and degrading treatment."[29] The allegedly tortious acts are described by plaintiffs as follows:

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[28] Complaint, Civil Action No. 81-0563 ¶¶ 32 and 48 Complaint, Civil Action No. 81-0564, ¶¶ 40 and 56.

[29] Complaint, Civil Action No. 81-0563 ¶ 64; Complaint, Civil Action No. 81-0564 ¶ 71. The allegations in Civil Action No. 81-0563 also include the additional "intentional tort of murder."

> The defendants tortured, terrorized, humiliated, wounded, injured, held hostage, threatened, inflicted mental distress upon, assaulted and battered the plaintiffs and otherwise subjected the plaintiffs to cruel, inhuman and degrading treatment.[30]

It is beyond dispute that plaintiffs' claims for assault, battery and false imprisonment are time-barred by the one-year limitations period of Section 12-301(4). Plaintiffs' remaining claims are similarly barred. The allegations that plaintiffs denominate as "causes of action" for the additional so-called "intentional torts" of "infliction of mental distress" and 'infliction of cruel, inhuman and degrading treatment," do no state separate or distinct rights of action. Indeed, the Complaints do not even purport to allege any facts to support the independent existence of these so-called "causes of action". Instead, by plaintiffs' own allegation, these "causes of action" arise out of the same conduct which allegedly constitutes the assault, battery, and false imprisonment. In Count I plaintiffs have done no more than assign two additional labels to that conduct.

Assumming for the sake of argument that the law of the District of Columbia would recognize independent causes of action for the so-called torts of infliction of mental distress and infliction of cruel, inhuman and degrading treatment, no such torts are properly pleaded in the Complaints. The infliction of mental distress and of cruel, inhuman and degrading treatment, as pleaded by plaintiffs

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30 Complaint, Civil Action No. 81-0563 ¶ 56; Complaint, Civil Action No. 81-0564 ¶ 64. In Civil Action No. 81-0563, plaintiffs also allege that defendants "murdered" the plaintiffs.

in Count I, are obviously nothing more than supplemental descriptions of conduct which is fully encompassed by the traditional common law intentional torts of assault, battery, and false imprisonment.

This Court should not countenance plaintiffs' transparent attempt to circummvent the one-year statute of limitations in their Count I allegations. Congress clearly intended Section 12-301(4) to apply to all intentional torts of the type asserted in Count I. The mere fact that plaintiffs came up with new words to describe the traditional terms chosen by Congress in drafting the statute, does not change the substance or the nature of the claims asserted by plaintiffs in Count I.

It is well established that "[t]he label which a plaintiff applies to a pleading does not determine the nature of the cause of action which he states." *Aktiebolaget Bofors v. U.S.*, 194 F.2d 145, 148 (D.C. Cir. 1951). *Accord, Johnson v. U.S.*, 547 F.2d 688 (D.C. Cir. 1976); *Blitz v. Boog*, 328 F.2d 596, 599 (2d Cir.), *cert. denied*, 379 U.S. 855 (1964) ("It is, of course, the substance of the claim, and not the language used in stating it, that controls."); *Universal Airline v. Eastern Air Lines*, 188 F.2d 993 (D.C. Cir. 1951); *Hendry v. U.S.*, 280 F. Supp. 27 (S.D.N.Y. 1968), *aff'd.*, 418 F.2d 774 (2d Cir. 1969).

Furthermore, as the Circuit Court held in ruling that the *nature* of a claim determines which statute of limitations applies, "the statute of limitations . . . cannot be evaded by referring to [a] cause of action in some other terms." *Universal Airline v. Eastern Air Lines*, 188 F.2d at 996. Thus, because Count I of these Complaints, *in substance*, alleges nothing more than claims for the inten-

tional torts covered by Section 12-301(4), the one-year limitations period of that statute must be applied. Accordingly, Count I of each of the Complaints should be dismissed in its entirety.

Similarly, Counts II, III, IV and V of the Complaints are also barred by Section 12-301(4). In Counts II, III and IV, plaintiffs merely restate the substantive allegations of Count I[31] and then supply yet another set of labels to those intentional tort claims.[32] Count V, which also repeats the same Count I substantive allegations,[33] purports to state a claim for conspiracy to commit the torts alleged in Counts I through IV.

As noted above, the Court must look to the *substance* of these claims to determine which statute of limitations to apply. The substance of the claims contained in Counts II through V is clearly identical to that of the claims in Count I—intentional torts. Like Count I, therefore, Counts II through V are subject to the one-year limitations period contained in D.C. Code § 12-301(4) and, accordingly, they are time-barred and should be dismissed.

Finally, the fact that plaintiffs in Civil Action No. 81-0563 purport to bring that action pursuant to D.C. Code §

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31 *Compare* Complaint, Civil Action No. 81-0563 ¶¶ 56-63 *with* ¶¶ 67-69, 99-101, and 119-21; and *compare* Complaint, Civil Action No. 81-0564 ¶¶ 64-70 *with* ¶¶ 74-76, 106-08, and 126-28.

32 Counts II, III and IV allege, respectively, torts in violation of: the law of nations, the treaties of the United States, and the laws of the United States.

33 *Compare* Complaint, Civil Action No. 81-0563 ¶¶ 56-63 *with* ¶¶ 134-35; and *compare* Complaint, Civil Action No. 81-0564 ¶¶ 64-70 *with* ¶¶ 141-42.

12-101 (the "Survival Act"), has no effect on the statute of limitations analysis set forth above. Representatives of persons who allegedly died as a result of the March 11 bus attack bring Civil Action No. 81-0563 on behalf of their decedents, pursuant to Section 12-101.[34] That section provides:

> On the death of a person in whose favor or against whom a right of action has accrued for any cause prior to this death, the right of action, for all such cases, survives in favor of or against the legal representative of the deceased.

As the statute itself makes clear, the Survival Act merely permits the legal representative of a deceased person to pursue a right of action that had accrued *to the deceased* prior to his death. The statute does not create a new right of action; rather, it "permits the injured person's *own claim* to be enforced after his death by his legal representatives." *Wharton v. Jones,* 285 F. Supp. 634, 635 (D.D.C. 1968). *Accord, Semler v. Psychiatric Institute,* 575 F.2d 922 (D.C. Cir. 1978); *Hudson v. Lazarus,* 217 F.2d 344 (D.C. Cir. 1954); *Thomas v. Doyle,* 187 F.2d 207 (D.C. Cir. 1950).

Because an action brought pursuant to the Survival Act is, in fact, a suit to enforce the deceased's cause of action, it is clear that the statute of limitations applicable to the deceased's right of action must be applied to the claim. *Strother v. District of Columbia,* 372 A.2d 1291 (D.C. 1977). *Accord, Jones v. Rogers Memorial Hospital,* 442 F.2d 773 (D.C. Cir. 1971); *Levy v. Baptist Hospital of*

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[34] Complaint, Civil Action No. 81-0563, ¶ 4.

Miami, Inc., 210 So.2d 730 (Fla. Dist. Ct. App. 1968); *Kimberly v. DeWitt*, 606 P.2d 612 (Okla. Ct. App. 1980); *Piacquadio v. Beaver Valley Service Co.*, 355 Pa. 183, 49 A.2d 406 (1946); *Stegner v. Fenton*, 351 Pa. 292, 40 A.2d 473 (1945). As the Circuit Court has stated:

> Unlike the wrongful death statute, . . . the survival statute creates no new right of action. It permits survival of a right of action that accrued to the deceased. *The statute of limitations commences running when the right of action first accrues to the deceased.*

Jones v. Rogers Memorial Hospital, 442 F.2d at 774 n.1 (emphasis supplied and citations omitted).

Thus, with respect to Civil Action No. 81-0563, as with Civil Action No. 81-0564, the statute of limitations began to run on March 11, 1978, when plaintiffs' decedents were allegedly injured. Similarly, because the decedents' causes of action are identical to those brought by the plaintiffs in Civil Action No. 81-0564 (except for the addition of an asserted claim for the "intentional tort of murder")—that is, for the intentional torts covered by the one-year limitations period in D.C. Code § 12-301(4)—the claims asserted in Civil Action No. 81-0563 are time-barred and therefore should be dismissed.

IV. *Conclusion.*

For the foregoing reasons, defendant NAAA submits that its Motion to Dismiss the Complaints in Civil Action Nos. 81-0563 and 81-0564 should be granted.

Respectfully submitted,

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Dated: April 15, 1981
Washington, D.C.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion of defendant National Association of Arab Americans to Dismiss the Complaints for Lack of Subject Matter Jurisdiction and for Expiration of the Limitations Period, with accompanying Memorandum of Points and Authorities in support thereof and two proposed orders, was delivered by hand this 15th day of April, 1981, to the following counsel of record: Michael S. Marcus, Esq., Lewis, Wilson, Lewis & Jones, Ltd., 2054 North Fourteenth Street, Post Office Box 827, Arlington, Virginia 22216, counsel for plaintiffs; and a copy was mailed, postage prepaid, to each of the following parties:

Libyan Arab Republic
1118 Twenty-Second Street, N.W.
Washington, D.C.

Palestine Information Office
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Washington, D. C.

Palestine Congress of North America
Post Office Box 9621
Washington, D. C. 20016

/s/ Cherif Sedky

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 81-0563

HANOCH TEL-OREN, on behalf of the deceased, Lmry Tel-Oren, *et al.*,

Plaintiffs,

v.

LIBYAN ARAB REPUBLIC, *et al.*,

Defendants.

Civil Action No. 81-0564

HANOCH TEL OREN, *et al.*,

Plaintiffs,

v.

LIBYAN ARAB REPUBLIC, *et al.*,

Defendants.

CONSOLIDATED MEMORANDUM OF POINTS AND AUTHORITIES SUBMITTED BY PLAINTIFFS IN OPPOSITION TO THE MOTION OF NATIONAL ASSOCIATION OF ARAB AMERICANS TO DISMISS THE COMPLAINTS FOR LACK OF SUBJECT MATTER JURISDICTION AND FOR EXPIRATION OF THE LIMITATIONS PERIOD

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Dated: April 30, 1981
Arlington, Virginia

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CONSOLIDATED MEMORANDUM OF POINTS AND AUTHORITIES SUBMITTED BY PLAINTIFFS IN OPPOSITION TO THE MOTION OF NATIONAL ASSOCIATION OF ARAB AMERICANS TO DISMISS THE COMPLAINTS FOR LACK OF SUBJECT MATTER JURISDICTION AND FOR EXPIRATION OF THE LIMITATIONS PERIOD

COME NOW, the plaintiffs, in Civil Action Nos. 81-0563 and 81-0564, and hereby submit this Memorandum in opposition to the motion of the National Association of Arab Americans, Inc. ("NAAA") to dismiss the complaints for lack of subject matter jurisdiction and for expiration of the limitations period. This Court has jurisdiction to

entertain the causes of action enumerated in the complaints against each of the defendants, including the NAAA, pursuant to 28 U.S.C. 1331 and 1350.[1] The causes of action are not barred by any appropriate statute or period of limitations. Whether this Court utilizes the period of limitation incorporated in the federal common law or the District of Columbia Statute of Limitations, the appropriate period of limitations for the alleged causes of action is three years. The complaints on behalf of the plaintiffs were filed within the three-year period of limitations.

I. FACTUAL BACKGROUND

On March 11, 1978, the surviving plaintiffs and decedents were subjected to inhuman and barbaric treatment by members of the El Fatah faction of the Palestine Liberation Organization ("PLO"). They were tortured, terrorized, held hostage, murdered, mutilated, forced to watch the mutilation and murder of loved ones, and were forced to remain in a burning inferno.[2] Mothers and fathers watched helplessly as their children were shot and burned alive. Children watched in shock as fathers and mothers were murdered and mutilated in front of their eyes. Every standard of human conduct accepted by the civilized world was violated by these PLO terrorists.

None of these victims were armed or able to defend themselves, nor were any of them members of the Israeli

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1 While for the sake of brevity the plaintiffs will not address herein the Court's jurisdiction pursuant to 28 U.S.C. 1332 or 1602-11, this is not to be construed or implied that the plaintiffs have abandoned these authorities as jurisdictional bases for the enumerated causes of action.

2 See Appendix A which is photographs of the commandeered bus after the attack.

military or any armed civilian police unit. Most of the victims were women, children, babies and old men. Against this group of unarmed civilians, the PLO terrorists used bazookas, hand grenades, machine guns and other weapons of deadly force.

The PLO terrorists did not even know the identity of their victims. These unfortunate human beings were selected at random by the PLO to be subjected to their indiscriminate and barbaric violence. The victims were citizens of the United States, the Netherlands and the State of Israel.

The purpose of this criminal and barbaric mission, as formulated by the PLO and the Libyan Arab Republic ("Libya") was to capture and hold as hostages Israeli civilians for the purpose of extorting the release of certain PLO terrorists in Israeli jails. The plan called for the terrorists to demand that the British and Rumanian ambassadors to Israel and the United Nations representative in Israel surrender themselves as hostages to guarantee the safe conduct of the terrorists to Damascus aboard a United Nations plane.

The terrorists were ordered by the PLO and Libya to kill all the hostages if their mission at any stage did not proceed according to plan, regardless of whether the hostages were women, children and/or old men. Both the PLO and Libya were well aware that it was a policy of Israel not to negotiate with terrorists or to agree to such extortion. The PLO and Libya in structuring the mission contemplated a mass murder.

The terrorist mission of the PLO cannot in any way be described as a military operation. Not only were the

victims unarmed civilians but there were no military objectives anywhere near the landing point used by the terrorists. The highway at which the terrorists commandeered the vehicles was a civilian and not a military highway. The vehicles commandeered were civilian buses and taxi cabs engaged in normal commerce.

As a result of the actions of the PLO terrorists, twelve children and twenty-two adults were killed, and fourteen children and sixty-three adults were seriously injured. Many of those killed were burned alive in the smoldering bus. The survivors sustained serious and permanent physical injuries, including the loss of limbs, burns to all parts of their bodies, and incapacitating internal injuries. All of the survivors sustained serious and permanent mental, emotional and psychological injuries. Many of the survivors are incapable of pursuing their former professions or performing normal life functions. Lives have been ruined. Families have been destroyed.

The statements of certain defendants in this case concerning the barbaric attack are very revealing. The general command of the forces of the PLO stated on the day of the attack, "We instructed the Deir Yassin force to carry out an operation in the conquered land in the name of the martyr, Kamal Adwan. The force began carrying out its task in the coastal area between Haifa and Tel Aviv at 18.40." The radio voice of the PLO from Lebanon on March 12, 1978 stated, "In the depths of the conquered land today there came the reaction of the people of Palestine, pioneers against the intrigue of the agents and traitors. Our fighters achieved an important revolutionary achievement, when they opened a broad front against the conquering occupationary forces in the heart of conquered

Palestine. This achievement represents . . . an assurance to our heroes that the revolution will continue to realize additional targets until the flag of Palestine will wave above our land and in the skies of our independent state."

Libya's official radio, in commenting on the March 11 massacre, heartily endorsed what it referred to as the heroic action of the Palestinians.[3] Libyan radio added that all doors must be opened to the just and legal struggle of the Palestinians and they must be allowed to strike the enemy in conquered Palestine.

Hisham Sharabi, at the time of the March attack, was a director of the NAAA and was a member of its executive committee. Subsequent to May, 1978, he served as the president of the NAAA. In commenting upon the barbaric attack Sharabi characterized the raid as showing that the Palestinians are willing "to hurl their bodies against the monster." He also stated, "I don't condemn the use of violence, as such, when it is carried out in a just cause, such as that of the Palestinians."[4] Sharabi, at the time of the raid, was and remains a close personal friend of Yasar Arafat, leader of the PLO and was and remains in close consultation with Arafat. Sharabi has actually been named as a possible member of a PLO government in exile.[5]

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3 *Washington Post,* March 13, 1978.

4 *Washington Post,* August 2, 1978.

5 Sharabi held a chair of Arab studies at Georetown University during 1977-78, which was financed by a $750,000 grant from Libya. Sharabi referred to Reverend Timothy S. Healy, the president of Georgetown University, as a Jesuit Zionist when Reverend Healy returned the $50,000 grant solicited by Sharabi and others from the Iraqi government.

The March 11 attack was not an isolated incident but was part of an overall plan designed by the PLO and Libya to wage a war of terror against unarmed Israeli civilians. In so doing, the PLO and Libya contemplated committing the act of genocide against the population of Israel. The March 11 attack was part of this act of genocide. All of the supporters of the PLO, including the American based defendants herein, knew that these were the objectives of the PLO at the time of and prior to the March attack.[6]

Prior to the March attack, the PLO had engaged in terrorist raids on hospitals, nurseries and school buses; bombed crowded marketplaces and other areas where large numbers of the civilian population congregated; and otherwise had directed barbaric attacks against purely civilian populations in highly populated areas of Israel. The PLO had claimed responsibility for scores of such attacks. In addition, the PLO, together with Libya, on August 11, 1976, carried out a criminal attack against passengers of an El Al plane in the Istanbul International Airport, killing four passengers and injuring twenty-one; planned and carried out the massacre of Israeli athletes during the Munich Olympics in 1972; on August 5, 1973, engaged in an indiscriminate massacre at Athens Airport of passengers who had departed from a TWA plane which had arrived from Israel; and had conducted the infamous attack on civilian passengers at Lod International Airport in Israel.

The Palestine covenant and the resolutions of the Palestine National Council, the governing body of the PLO,

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[6] It is the position of the plaintiffs that the Palestine Congress of North America ("PCNA") is responsible for the actions and knowledge of the various groups which formed and now compose the Congress. A list of these groups is included as Appendix B.

make it very clear that it is the objective and aim of the PLO to conduct indiscriminate terror attacks on unarmed civilians in Israel and to engage in the act of genocide against the population of Israel. Yasar Arafat, head of the PLO, has stated many times, "Peace for us means the destruction of Israel . . . Revolutionary violence is the only means for the liberation of the land of our fathers. The goal of that violence is the destruction of Zionism in all its political, economic and military forms and its expulsion from Palestine." Sami al-Atari, secretary for the PLO central committee, on March 7, 1978 reiterated the PLO purpose, "self-determination for the Palestinian people is identical with the destruction of Israel."[7]

The United States, of course, is directly affected by and has a direct interest in any concerted effort to commit crimes against mankind and to commit the act of genocide against the people of any friendly nation. In that regard, the United States and its laws, as a member of the civilized community of nations, has (sic) been directly affected by and has (sic) a direct interest in the March 11 barbaric attack.

The interest of the United States in the March 11 attack is even more pronounced. One of the primary purposes of the attack was to sabotage the foreign relations of the United States and its negotiations by destroying the

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[7] President Ronald Reagan in response to a question whether he would brand the PLO as a terrorist organization, responded, "I have no hesitation in doing so. We live in a world in which any band of thugs clever enough to get the word 'liberation' into its name can thereupon murder school children and have its deeds considered glamorous and glorious. Terrorists are not guerillas or commandoes or freedom fighters or anything else. They are terrorists and they should be identified as such." *Human Events*, December 13, 1980.

positive efforts made in the Camp David accords. It was the intent of the PLO and Libya to conduct such a barbaric attack that would mandate a response by Israel against the Palestine guerrilla bases in southern Lebanon, thus setting off a chain of events which would create a climate making it impossible for any Arab government to negotiate with Israel or for that matter, with the United States. This is in part documented by the statements of the PLO itself and also in part by the increased number of terrorist actions within Israel during 1978.

In mid-February of 1978, the PLO set off a time bomb in a crowded Jerusalem bus, killing two persons and injuring forty-six. In August of that year, there were twenty-three bomb incidents in populated areas of Israel. On September 30, a PLO ship, loaded with explosives, set out for the seaside resort of Eilat, which at that time was filled with tens of thousands of persons celebrating the Jewish New Year. The ship was mounted with 42 Katyuska rockets and had four tons of dynamite aboard. The objective of the mission was to set ablaze with the rockets a huge oil dump on the outskirts of Eilat, set the ship's automatic pilot straight for the crowded beach, and cause the deaths of thousands of vacationers. Such a halocaust might actually have taken place but for the interception of the ship by an Israeli gunboat.[8]

The interest of the United States in and its involvement with the March 11 massacre goes even deeper. Libya, prior to this terrorist attack, obtained from within the United States sophisticated terrorist arms and equipment

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[8] *The Terror Network,* Claire Sterling, Holt, Reinhart and Winston (1981) at p. 280.

and recruited ex-United States Green Beret and CIA instructors, all for the purpose of assisting the PLO in its terror campaign against the Israeli civilian population. As part of this program, Libya contracted with fugitive Francis Terpil, a citizen of the United States, to organize a network in the United States to illegally obtain explosive devices, arms and terrorist instructors. Thousands of machine guns, missiles and explosive devices were obtained for the PLO by Francis Terpil with the aid of certain American based groups in sympathy with the PLO. In addition, Terpil recruited a team of American clandestine operatives, paramilitary specialists, professional killers and explosive experts trained by the CIA and the United States special forces to conduct terror training for PLO operatives.[9]

Much of the arms and equipment used by the terrorists in the March 11 attack were obtained by the PLO through Libya in this manner. The recruited team of American clandestine operatives trained in Libya the PLO instructors who in turn trained the very terrorists who conducted the attack on the plaintiffs herein.

Prior to the March 11 attack, the PLO was directly involved in raising funds within the United States in support of its terrorist campaigns. Representatives of the PLO attended meetings of American-based groups sympathetic with the objectives and operations of the PLO for the purpose of soliciting an independent base of funds. Indicative of these efforts is a letter written on the stationery of the PLO's United Nations office and signed by Jacob Oubedi, the PLO's top fund raiser, thanking the Palestine

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[9] See the criminal indictment of Francis E. Terpil and others, which is Appendix C.

committee in the State of Virginia for the money it had raised for the benefit of the PLO operations.[10] The letter indicates that the money had been turned over to him by the PLO director in New York, Zoher Tarazi. The same Mr. Tarazi has acknowledged in 1976 that Oubedi was in the United States for the purpose of raising funds for the operations of the PLO.[11]

With the knowledge of the aims, objectives and terrorist activities of the PLO, the NAAA and the groups now composing the PCNA, funded, assisted in the funding, assisted the obtaining of arms, ratified, encouraged, apologized for and otherwise acted in furtherance of the PLO and Libyan plot to reap terror upon the civilian populations of Israel. These efforts culminated in the March 11 massacre, which was the worst terrorist attack in the history of Israel. In light of their actions in support of this terror campaign, the plaintiffs allege that the NAAA and the PNCA are legally responsible for having planned and conspired to commit this campaign of terror, including the March 11 attack.[12]

Sharabi, from its inception, has been a leader of and an influential spokesman for the NAAA. In 1972, in dis-

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10 See the letter from Jacob Oubedi which is Appendix D.

11 See the column of Jack Anderson dated September 20, 1976, which is Appendix E.

12 The Palestine Information Office ("PIO") is the agent and alter ego of the PLO, and is responsible for all the actions of the PLO within and without the United States. See Appendix F, which is the Supplemental Registration Statement of the PIO filed with the Department of Justice for the six-month period ending October 24, 1979 and Appendix G, which is the Report of the Attorney-General concerning the Foreign Agents Registration Act for the calendar year 1979.

cussing the so-called imperatives of the Palestine Revolution in the introduction to a book entitled *Palestine Lives: Interviews with Leaders of the Resistance.* Sharabi made the following statement: "The fourth imperative is to keep alive an active Palestinian resistance. It is primarily the *organized violence* of the oppressed Palestinians which is able to achieve the above imperatives in creating a libeeration movement. Armed struggle is the condition for organizing the people, for carrying out political struggle, for keeping the fires of liberation burning." [Emphasis added]

During 1972, in a PLO publication entitled *Shuon Falastiniyeh,* Sharabi wrote,

> No settlement can be realized between Zionism and the Palestinian movement except by one of two ways: the dissolution of the Palestinian people, or the dissolution of the Zionist structure. The destruction of the Zionist structure is not only logical but inevitable. It is the *organized Palestinian violence* which can realize the Palestinian's claims and create a successful liberation movement. The armed struggle is the condition for organizing the people for the political struggle and for preserving the flame of liberation. [Emphasis added].

These are the real aims and objectives of the NAAA, as stated by its leading spokesman. It is not surprising that they are virtually identical to the aims and objectives of the PLO, since Sharabi is also one of the leading spokesmen for the PLO throughout the world.

The NAAA in its Memorandum attempts to obtain considerable mileage from its March 15, 1978 press release attached as its Appendix G. In the first place, the statement hardly contains a strong condemnation of the bar-

baric actions of the PLO on March 11. While the statements against Israel's actions in Lebanon are clear and unequivocal, the statements relating to "the attack on an Israeli bus March 11" are equivocal and hardly dramatic. The real intent and message of the NAAA, however, can be ascertained by comparing the purely public relations release of March 15, 1978 with the statement of the NAAA circulated by President Baroody to its members on March 21, 1978. Neither that statement nor its accompanying letter mention any condemnation of the PLO attack of March 11, although it discusses the same actions of Israel in Lebanon discussed in the press release of March 15, 1978.[13] The statement of the NAAA to its members constitutes the true position of the NAAA.

The PCNA was formed by and is composed of several national groups who are sympathetic with and support the PLO. Four of those groups, the Palestine Arab Fund ("PAF"), the American Federation of Ramallah Palestine, Committee for Democratic Palestine and the United Holy Land Friends, are permanently represented on the executive committee of the PCNA and constitute a significant portion of that committee. The PCNA is responsible for the prior actions of the groups which formed and now constitute the PCNA, particularly those four groups which compose the executive committee. These four groups, together with other affiliated groups, raised funds for the terrorist actions of the PLO prior to March 11, 1978, and otherwise acted in furtherance of the PLO terrorist attacks.

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[13] See the letter and Statement of Baroody to the members of the NAAA, which is Appendix H.

The PAF has been designated by El Fatah as its authorized agent for all financial activities in the western United States. At the PAF convention in Albuquerque in September, 1978, a greeting book carried ads from various Arab groups, calling for "Death of Zionists everywhere" and had many appeals to violence. PAF mailings asking for contributions regularly list recent terrorist attacks carried out by the PLO, the number of Israeli casualties and the amounts of damage caused—all in an attempt to stimulate further donations. During the year 1977, the PAF, according to its financial statement issued at the 1978 meeting, forwarded to the PLO $160,000 to support the PLO terrorist operations. Prior to March 1978, the United Holy Land Friends, utilizing similar methods, raised considerably larger sums for the PLO terrorist activities.[14]

Dr. Tony Sayegh, who acts as the PAF's official spokesman in the United States, has stated that the PAF approves of Palestinian terrorist attacks in the Middle East, even when aimed at American or European tourists.[15]

The NAAA works in close cooperation with the PCNA and its subsidiary groups. Many of the active members and leaders of the NAAA are and have been leaders in the PCNA and/or its subsidiary groups.

II. ALLEGATIONS IN THE COMPLAINT ARE SUFFICIENT TO OVERCOME A JURISDICTIONAL ATTACK PREMISED ON A FACTUAL BASIS

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14 *The PLO Underground in California,* Ehud Young, *New West* (Feb. 26, 1979), p. 24, and the *San Diego Union,* April 20, 1979.

15 Ibid.

For the purposes of determining jurisdiction under 28 U.S.C. 1331 and/or 1350, the allegations of fact set out by the plaintiffs in the complaints and further amplified in this Memorandum must be accepted by this Court as true and given all the reasonable inferences to which they are entitled. *Watkins v. Wilson,* 425 F.Supp. 166 (D.C. 1977); *Hartigh v. Latin,* 158 U.S. App. D.C. 289, 485 F.2d 1068 (1973), *cert. denied* sub nom: *District of Columbia v. Marsh,* 415 U.S. 948 (1974). In opposing a motion to dismiss the complaint for lack of subject matter jurisdiction under § 1331 or 1350, the plaintiffs do not have a duty and are under no obligation to substantiate the allegations in the complaint, particularly when the discovery process has not yet even begun. A motion to dismiss for lack of jurisdiction must be considered in light of the allegations in the complaint and can only be sustained if those allegations as pled do not give rise to a cause of action over which the Court has jurisdiction.[16]

III. THE TORTS ALLEGED IN THE COMPLAINT ARE PROPERLY CHARACTERIZED AS TORTS IN VIOLATION OF THE LAW OF NATIONS, TORTS IN VIOLATION OF THE TREATIES OF THE UNITED STATES, AND TORTS IN VIOLATION OF THE LAWS OF THE UNITED STATES; MORE SPECIFICALLY, THEY ARE THE INTERNATIONALLY RECOGNIZED TORTS OF TOR-

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16 The only "evidence" submitted by the NAAA in opposition to the allegations of the complaint is a self-serving affidavit of former president Baroody, the same individual who released contradictory statements to the press and to the members of NAAA. This self-serving affidavit has no probative value and certainly Mr. Baroody would be subject to deposition concerning the statements made therein.

TURE, TERROR, HOSTAGE-TAKING, AND GENOCIDE.

The NAAA, throughout its Memorandum, has attempted to characterize the actions of the PLO terrorists against the plaintiffs as constituting solely the simple torts of assault, battery and false imprisonment. The plaintiffs do no dispute that they were assaulted, battered and falsely imprisoned, among other tortious actions. But to characterize the conduct of the PLO terrorists as suggested by NAAA is to ignore the reality of the circumstances confronted by the surviving plaintiffs and the decedents.

The actions of the PLO terrorists went well beyond assault, battery and false imprisonment. They were barbaric and inhumane almost beyond description. These actions constitute crimes of the most hideous nature against the plaintiffs and also against mankind. The conduct of the terrorists violate the basic premise of civilized existence. Such conduct has been universally condemned by the civilized world in treaties and declarations.

As such, the tortious conduct committed against the plaintiffs rises above the simple torts of assault, battery and false imprisonment, and become torts in violation of the law of nations and also torts in violation of the treaties of the United States and the laws of the United States.[17]

The concept that certain tortious actions and certain criminal actions when committed in the context of a campaign of terror become torts and crimes of a higher and

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[17] See *Federal Jurisdiction of International Human Rights Claims: the Alien Tort Claims Act after Filartiga v. Pena-Irala*, Harvard International Law Journal, Vol. 22 No. 1 (Winter, 1981).

different order has been recognized by the Inter-American Juridical Committee of the Organization of American States, and the General Assembly of that organization. The General Assembly, as early as 1970, took the position that acts of violence constituting serious violations of human rights are crimes against humanity and thus of a higher and distinct order, in addition to being common crimes and torts.

When the crime and tort becomes a crime against humanity, and thus an offense against the international community and fundamental human rights, a new and distinct tort and crime has been committed by the terrorist perpetrators. The atrocious and barbaric nature of these terrorist acts has caused them traditionally to be regarded as *delicta juris gentium*.[18] This is a recognition by traditional international law that these kinds of actions constitute a distinct and more reprehensible conduct than common crimes or torts.[19]

The Inter-American Juridical Committee of the OAS in its Statement of Reasons for the Draft Convention on Terrorism and Kidnapping of Persons for Purposes of

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[18] See *United States v. Pirates*, 18 US (Wheat.) 184 (1820); *United States v. Klintock*, 18 US (Wheat.) 144 (1820); *United States v. The La Jeune*, 26 F.Cas. 15,551 (Cir. Mass. 1822).

[19] See Statement of Reasons for the Draft Convention on Terrorism and Kidnapping of Persons for Purposes of Extortion, Inter-American Juridical Committee, October, 1970.

Extortion offered the following concept of the crime of terrorism:

> Crimes identified as crimes of terrorism are not ones that do not previously exist and that have risen as new forms of crimes. They are same class of crimes such as murder, arson, use or storage of explosives, contamination of water, and the interruption of all kinds of communications media. What is new is that, for some time, certain organizations have been formed that prepare and execute such crimes with deliberate intention of causing panic, disorder, and terror within an organized society, in order to destroy social discipline, paralyze the forces of reaction of a society and increase the misery and suffering of the community.

The Committee went on to state that the crime of terrorism is a new and distinct crime because it combines the classic crimes with attacks equally upon the individual, the society in which he lives, the state to which he belongs, and the international community of which he forms a part. The object of the crime is to produce terror or intimidation that creates a common threat to life, health, physical integrity and freedom of persons.

The statements of the Inter-American Juridical Committee are equally applicable to the torts committed against the plaintiffs by the PLO terrorists. The terrorists combine the classic torts of assault, battery, false imprisonment, infliction of mental distress and infliction of cruel and inhuman treatment with an attack upon the individual, the society of Israel, and the international community. The purpose and objective of the actions of the terrorists was to produce terror and intimidation and to create among the civilian population of Israel a common threat to life, health, physical integrity and freedom of persons. Consequently, the actions of the terrorists can-

not be described as simply common law torts, but they are in addition torts of a distinctive and higher nature, torts in violation of the laws of nations and the civilized world.

The United States Court of Appeals for the District of Columbia in *Payne v. Government of the District of Columbia, et al.*, 182 U.S. App. DC 188, 559 F.2d 809 (1977) recognized that tortious actions against an individual under certain circumstances (in that case by officers acting under color of law) can create concurrent torts of different kinds and natures. Adopting the holding of the United States Court of Appeals for the District of Columbia in the *Payne* case, the plaintiffs herein are litigating against the defendants concurrent and distinct torts, torts in violation of the law of nations, in violation of the treaties of the United States, and in violation of the laws of the United States; more specifically designated as torture, terror, hostage-taking and genocide.

IV. ACTS IN FURTHERANCE OF TORTIOUS CONDUCT ARE ACTIONABLE TORTS

Parties, such as the NAAA and the subsidiary groups of the PCNA, who act in furtherance of tortious conduct and conspire to commit such tortious conduct are liable for the torts committed against the plaintiffs even if they did not directly perform the physical acts inflicting the injury upon the plaintiffs.

All that is necessary for the NAAA to be liable herein is that the NAAA shared the general objectives of the PLO and assisted the PLO in furtherance of the terrorist campaign. In order for the NAAA to be liable herein, there need not be an express agreement between the PLO and the NAAA, nor need the NAAA know all the details of the plan designed to achieve the objectives, or even possess

the same motives for desiring the intended result. *Hampton v. Hanrahan,* 600 F.2d 600 (6th Cir. 1979). See *Fenslage v. Dawkins,* 629 F.2d 1107 (5th Cir. 1980); *El Ranco, Inc. v. First National Bank of Nevada,* 406 F.2d 1205 (9th Cir. 1968); *Scott v. Moore,* 461 F.Supp. 224 (E.D. Tex. 1978).

The actions of the NAAA as alleged in the complaint are sufficient to render the NAAA liable for all injuries sustained by the plaintiffs and constitute actionable torts in furtherance of the tortious attack of the PLO.

The Restatement Second of the Law of Torts, supports the conclusion that the NAAA is liable for its actions in furtherance of the tortious conduct of the PLO, even if the NAAA did not directly perform the physical acts inflicting harm and injury upon the plaintiffs. Section 876, entitled "Persons Acting in Concert" provides as follows:

> For harm resulting to a person from the tortious conduct of another, one is subject to liability if he
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> (a) does a tortious act in concert with the other or pursuant to a common design with him, or
>
> (b) knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself."

Section 877, entitled "Directing or Permitting Conduct of Another" provides:

> For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he
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> (a) orders or induces the conduct,
>
> (b) if he knows or should know of circumstances that would make the conduct tortious, if they were his own, or

(c) permits the other to act upon his premises or with his instrumentalities, knowing or having reason to know that the other is acting or will act tortiously.

Under either Section 876 or 877, the allegations of the plaintiff against the NAAA are more than sufficient to render NAAA liable for all the injuries by the plaintiffs.

V. THIS COURT HAS JURISDICTION OVER THE CAUSES OF ACTIONS AGAINST THE NAAA BROUGHT BY ALL PLAINTIFFS PURSUANT TO 28 U.S.C. § 1331 AS THEY ARISE UNDER THE LAWS OF NATIONS AND THUS THE LAWS OF THE UNITED STATES[20]

A. THE TORTIOUS CONDUCT OF THE PLO TERRORISTS IS IN VIOLATION OF THE LAW OF NATIONS.

The PLO terrorists committed the torts of terror, torture, hostage-taking and genocide against the plaintiffs. Each of these torts are in violation of and actionable under the laws of nations.

The laws of nations is (sic) ascertained by consulting international agreements, international custom, general principles of law recognized by civilized nations, judicial decisions recognizing and enforcing that law, and the teachings of learned commentators. *United States v. Smith*, 18 U.S. (5 Wheat.) 153 (1820); *The Paquete Habana*, 175 U.S. 677 (1900); *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980). See also, Statute of the International Court of Justice, Article 38, June 26, 1945, 59 Stat. 1055, 1060 (effective October 24, 1945).

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[20] It is noted that NAAA in its Memorandum did not even address this most important and dispositive issue.

These sources are abundantly clear that mass terrorizing of unarmed populations with the intent to murder and mutilate is contrary to and actionable under the law of nations. Such actions are construed by the law of nations to be crimes against humanity and are universally condemned by civilized law. Such terrorist acts violate fundamental human rights, the core rights upon which civilized nations exist, and thus are among those core violations of the law of nations which give rise to actionable torts.[21] See Federal Jurisdiction over International Human Rights Claims: The Alien Tort Claims Act after *Filartiga v. Pena-Irala,* supra.

The United States in September, 1972, tendered to the General Assembly of the United Nations a Draft Convention For The Prevention and Punishment of Certain Acts of International Terrorism. In that document, the United States, after stating that civilians must be protected from terrorist acts, represented the law of nations to be as follows:

> Any person who unlawfully kills, causes serious bodily harm or kidnaps another person, attempts to commit any such act, or participates as an accomplice of a person who commits or attempts to commit any such act, commits an offense of international significance if the act
>
> (a) is committed or takes effect outside the territory of a state of which the alleged offender is a national; and
>
> (b) is committed or takes effect

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[21] The same is equally true of the torts of torture, hostage-taking and genocide.

(i) outside the territory of the state against which the act is directed

(c) is committed neither by nor against a member of the armed forces of a state in the course of military hostilities and

(d) is intended to damage the interests of or obtain concessions from a state or international organization.

Acts of terror, such as committed by the PLO members against the plaintiffs, are directly prohibited by many international agreements, including the United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Convention on the Suppression of Terrorism, the Geneva Convention for the Protection of Civilian Persons in Time of War (August 12, 1949), the Geneva Convention for the Prevention and Punishment of Terrorism (November 16, 1937), the Declaration of the Rights of the Child, General Assembly Resolution 1386 (XIV) (1959), the Principles of the Law of Nations Against Committing Terrorism on Civilian Populations Pronounced in General Assembly Resolution 2444 (XXIII) (1968), the Convention to Prevent and Punish Acts of Terrorism (February 2, 1971) of the Organization of American States and other acts, declarations and resolutions of international bodies.[22]

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[22] The fact that some of these document may not have been ratified or may not constitute treaties is totally irrelevant to the question as to what is the law of nations with regard to terror, torture, hostage-taking and/or genocide. See *Filartega v. Pena-Irala*, supra.

Protocol 1 to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (adopted by the conference on June 8, 1977) is an extremely authoritative source to determine the law of nations as relating to terrorism in March, 1978. Article 51 of Protocol 1, entitled "Protection of Civilian Populations", provides as follows:

> (1) The civilian population and individual civilans shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules which are additional to other applicable rules of international law shall be observed in all circumstances.
>
> (2) The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence, the primary purpose of which is to spread terror among the civilian populations are prohibited.

The essence of Article 51 of Protocol 1 is to prohibit deliberate attacks on civilian populations, and acts or threats of violence of which the main aim is to terrorize the population by indiscriminate attacks. See *New Code for the Protection of Civilian Populations and Property During Armed Conflict,* Ionel Closca, International Review of the Red Cross, November-December, 1980. There simply can be no question that the PLO terrorists did exactly what is prohibited by the law of nations as documented by Article 51 of Protocol 1 to the Geneva Conventions of 12 August 1949.

The extent to which the commission of indiscriminate terror on civilian populations is prohibited by the law of nations and condemned by the laws of the United States is set out with clarity by President Richard M.

Nixon in 1972 when he established the Cabinet Committee to Combat Terrorism. At that time, President Nixon said as follows:

> The use of terror is indefensible. It eliminates in one stroke those safeguards of civilization which mankind has painstakingly erected over the centuries.
>
> But terror threatens more than the lives of the innocent. It threatens the very principles upon which nations are founded. In this sense every nation in the United Nations, whatever its ideological assumptions, whoever its adversaries, wherever its sympathies, is united with every other nation by the common danger to the sovereignty of each.[23]

These same international documents establish that torturing unarmed civilians, holding such civilians hostage for extortion and committing acts of genocide are similarly in violation of and actionable under the law of nations.

Article 5 of the Universal Declaration of Human Rights provides: "No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment."

Article 3 of the Geneva Convention of 12 August 1949 Relating to the Protection of War Victims, states

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[23] For further evidence that indiscriminate terrorism against civilian populations violates the law of nations and is actionable under the law of nations, see *In Re Extradition of Ziyad Abu Eain*, N.D. Ill. 1979; *International Terrorism and Political Crimes*, M. Cherif Bassiouni, Charles C. Thomas (1975); Statement of Reasons for the Draft Convention on Terrorism and Kidnapping of Persons for Purposes of Extortion, Inter-American Juridical Committee (October, 1970).

that the following acts "are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons [persons taking no active part in hostilities]: (a) violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular, humiliating and degrading treatment."

The Convention on the Prevention and Punishment of the Crime of Genocide declares that genocide, whether committed in time of peace or in time of war, is a crime under international law. It defines genocide to mean, among other actions, the deliberate inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part. This is, of course, exactly what Libya and the PLO are attempting to do to the civilian population of Israel through terrorist actions such as the March 11 massacre.

The United Nations 1975 Declaration on the Protection of All Persons From Being Subject to Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment is further evidence that the law of nations prohibits the cruel and barbaric actions of the PLO terrorists. Article II of that Declaration provides:

> Any act of torture or other cruel, inhuman or degrading treatment or punishment is an offense to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights.

The United States Court of Appeals for the Second Circuit in *Filartiga v. Pena-Irala,* supra, directly held

that torture was in violation of and actionable under the law of nations. The authorities cited in the Second Circuit decision, coupled with the reasoning in that opinion, necessitate a conclusion that torture, terror, hostage-taking, and acts of genocide are likewise in violation of and actionable under the law of nations. The decision of the Second Circuit is consistent with and supported by several decisions of the International Court of Justice, which confirm the existence of the customary international law of human rights and causes of action for violating such law of human rights.[24]

There is universal consensus that terror, torture, taking of hostages and the act of genocide are in violation of and actionable under the laws of nations. Many other authorities could be cited if space permitted. But in view of the fact NAAA did not even argue the point, plaintiffs assume that the authorities cited in the Memorandum are more than sufficient to establish this principle of universal acceptance.[25]

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[24] *Nuclear tests (Australia v. France)*, Judgment of December 20, 1974 [1974] ICJ 253; *Advisory Opinion on Legal Consequences for States of the Continued Presence of South Africa in Namibia (Southwest Africa) notwithstanding Security Counsel Resolution 276* (1970) [1971] ICJ 16.

[25] For further support of this principle, see Statement by United States Representative Robert Rosenstock, Legal Affairs Advisor to the United States Mission to the United Nations, entitled, "United States Supports Establishment of a U.N. Ad Hoc Committee on Drafting of Convention Against Taking of Hostages", Department of State Bulletin, January 24, 1970, page 72; Statement by United States Representative Monroe Leigh, Legal Advisor of the Department of State, entitled, "U.S. Calls for Responsible Measures Against International Terrorism," Department of State Bulletin, January 24, 1977, page 75; Statement by Ambassador Myerson, entitled, "U.S. Supports U.N. Resolution Against the Practice of Torture," Department of State Bulletin, January 24, 1977, page 77.

B. THE LAW OF NATIONS IS PART OF THE FEDERAL COMMON LAW.

The law of nations forms an integral part of the federal common law, and a review of the history surrounding the adoption of the Constitution demonstrates that it became part of the common law of the United States upon the adoption of the Constitution. *Filartiga v. Pena-Irala,* supra.

The Supreme Court of the United States in *The Paquete Habana,* supra, 175 U.S. at 700, stated, "International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination". This holding by the Supreme Court was consistent with and was supported by prior holdings of the United States Supreme Court in *The Nereide,* 13 U.S. (9 Cranch.) 388 (1815) and *The United States v. Smith,* supra, which proclaimed that the law of nations was part of the federal common law and was to be ascertained and administered by the federal courts.

Both the majority opinion and the dissenting opinion in *Banco Nacional de Cuba v. Sabbatino,* 376 U.S. 398 (1964), stated that the law of nations was part of the federal common law and was to be administered by the federal courts. Justice White, in his dissenting opinion at page 450, states the principle most eloquently:

> I start with what I thought to be unassailable propositions: that our courts are obliged to determine controversies on their merits, in accordances with the applicable law; and that part of the law American courts are bound to administer is international law. . . . . The doctrine that the law of nations is a part of

> the law of the land, originally formulated in England and brought to America as part of our legal heritage, is reflected in the debates during the Constitutional Convention and in the Constitution itself. This Court has time and time again effectuated the clear understanding of the Framers, as embodied in the Constitution, by applying the law of nations to resolve cases in controversies. . . . Principles of international law have been applied in our courts to resolve controversies, not merely because they provide a convenient rule for decision but because they represent a consensus among civilized nations on the proper ordering of relations between nations and the citizens thereof. Fundamental fairness to litigants as well as the interest in stability of relationships and preservation of reasonable expectations call for their application whenever international law is controlling in a case or controversy.

There can be no question that in light of the torts committed by the PLO terrorists and the context in which those torts were committed, international law is controlling with regard to deciding the issues raised by the causes of action presented in the complaints of the plaintiffs.

When there is consensus concerning the particular area of international law and a particular area of international law involves principles relating to fundamental human rights and justice, the violation of that law of nations gives rise to tort actions under federal common law. See *Banco Nacional de Cuba v. Sabbatino,* supra, and *Filartega* (sic) *v. Pena-Irala,* supra.

C. TORTIOUS ACTIONS UNDER FEDERAL COMMON LAW ARISE UNDER THE LAWS OF THE UNITED STATES AS THAT PHRASE IS USED IN ARTICLE III OF THE CONSTITUTION AND IN 28 U.S.C. 1331.

The Supreme Court of the United States held in *Illinois v. City of Milwaukee, Wisconsin,* 406 U.S. 91 (1972), in construing the Federal Water Pollution Control Act, that 28 U.S.C. 1331 jurisdiction supports claims founded upon federal common law as well as those of statutory law. The United States Court of Appeals for the District of Columbia has rendered a similar unequivocal ruling. In *Trans-Bay Engineers and Builders, Inc. v. Hills,* 179 U.S. App. D.C. 184, 551 F.2d 370 (1976), involving a question concerning the equitable obligations of the Secretary of HUD with regard to a certain contractor, Judge Leventhal recognized that the claim of equitable right was dependent on federal common law. With regard to jurisdiction under 28 U.S.C. 1331, federal question jurisdiction, he held at p. 377 as follows: "A claim 'arises under the laws of the United States' if the disposition of issues stated in the complaint requires application of federal common law." *Illinois v. City of Milwaukee,* 406 U.S. 991, 100, 92 S.Ct. 1385, 31 L.Ed. 2d 712 (1972). There is federal question jurisdiction under 28 U.S.C. 1331(a)."

In *Filartiga v. Pena-Irala,* supra, the plaintiff, a Paraguayan national, brought suit against a Paraguayan official for wrongfully causing the death of the plaintiff's son by the use of torture. The tortuous activity took place in Paraguay. The Second Circuit did not characterize the tortious allegations as simply alleging the common torts of assault, battery and false imprisonment. Instead, the court recognized that the torts committed against the deceased were of a higher order and constituted the internationally recognized tort of torture. The court ruled that the commission of this tort was in violation of and was actionable under the law of nations.

Adopting the holdings of the Supreme Court that the law of nations was part of the federal common law, the United States Court of Appeals for the Second Circuit in *Filartiga* held that such an allegation of torture was a case properly arising under the laws of the United States for Article III purposes since it was grounded upon the common law of the United States. While the court proceeded to find jurisdiction over the causes alleged therein pursuant to 28 U.S.C. 1350, the court recognized in footnote 22 that the reasoning of the opinion might also sustain jurisdiction under the general federal question provision, 28 U.S.C. 1331.

The case presented to the Court in *Filartiga* was actually a more difficult case than the case at bar with regard to jurisdiction under either 28 U.S.C. 1331 or 1350, since (a) there was no United States connection whatsoever for the tortious conduct, and (b) the actionable conduct involved relationships between a sovereign country and its own citizens. Given those extra difficulties, the holding of the Second Circuit in the *Filartiga* case is extremely persuasive authority for the conclusion that the causes of action alleged herein arise under the laws of the United States and that this Court has jurisdiction pursuant to 28 U.S.C. 1331.

VI. THIS COURT HAS JURISDICTION OVER THE CAUSES OF ACTION OF ALL ALIEN PLAINTIFFS AGAINST NAAA PURSUANT TO 28 U.S.C. 1350 BECAUSE THE TORTIOUS AC-

TIONS ARE IN VIOLATION OF THE LAW OF NATIONS[26]

28 U.S.C. 1350 provides "the District Court shall have original jurisdiction of any civil actions brought by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."

Previously in this Memorandum, we have delineated that the PLO terrorists committed the torts of terror, torture, hostage-taking and genocide against the surviving plainiffs and the decedents, and that NAAA was liable for the commission of those torts. In the previous section, we have demonstrated that the tortious actions of the PLO terrorists were in violation of the laws of nations, were crimes against humanity and were contrary to the fundamental core of human rights universally recognized by civilized nations. With regard to all of the alien plaintiffs in these two lawsuits, each of the jurisdictional requirements for bringing a cause of action under 28 U.S.C. 1350 has been satisfied.

The *Filartiga* case, which was discussed at length in the previous section of the Memorandum, is absolute authority for this Court having jurisdiction over the claims of all alien plaintiffs in the cases herein, pursuant to 28 U.S.C. 1350. It is not surprising that NAAA did not even mention, let alone discuss, the *Filartiga* case in this Memorandum.

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[26] It is contended that this Court also has jurisdiction pursuant to 28 U.S.C. 1350 because the tortious actions were in violation of the treaties of the United States. The following section of this memorandum deals with the question of treaty violations with respect to 28 U.S.C. 1331 and will be relied upon, together with this section, to support jurisdiction pursuant to § 1350 with regard to violation of treaties of the United States.

The Second Circuit in the *Filartiga* case found that the torture of a civilian was in violation of the laws of nations and, as such, was a tortious action with (sic) the meaning of 28 U.S.C. 1350. The commission of terror, torture, hostage-taking and acts of genocide against the unarmed civilians in our circumstance, certainly is no less a violation of the law of nations and warrants equal recognition by this Court pursuant to § 1350. It is exactly the kind of inhuman and barbaric treatment of the plaintiffs herein which is most appropriate for litigation pursuant to § 1350, because they represent the most heinous kind of conduct against society and constitute universally condemned crimes against all of humanity.

The United States District Court for Maryland, in *Abdul-Rahman Omar Adra v. Clift,* 195 F. Supp. 857 (1961) rendered a decision which also supports the jurisdiction of this Court over all alien claims pursuant to § 1350. In that case, an action was brought by an alien for a judgment requiring the defendant to deliver plaintiff's daughter to his custody. The allegation therein was that the child had been improperly removed from the custody of the alien plaintiff. The Court held that it had jurisdiction pursuant to 28 U.S.C. 1350 to entertain the causes of actions brought by the plaintiff, under the theory that the actions of the defendant, as pled, were in violation of the law of nations. Adopting Hyde's International Law, Second Revision, 1945, Vol. I, Section 11(a), pp. 33-34, under the heading "The Relation of International Law to Private Individuals", the Court ruled that the commission of certain acts may be so detrimental to the welfare of the international society that the law requires the tortious offender to be held liable wherever he

may be found. The Court then concluded that such a principle was part of the laws of the United States and was evidenced by 28 U.S.C. 1350 itself.

There is no requirement that all the plaintiffs must be aliens in the lawsuits before this Court can have jurisdiction pursuant to 28 U.S.C. 1350. No authority for this proposition was cited by NAAA in its Memorandum. It really cannot be argued that this Court somehow loses jurisdiction pursuant to 28 U.S.C. 1350 because this Court has jurisdiction over the claims of United States plaintiffs pursuant to § 1331.

The constitutional basis for § 1331 and § 1350 is exactly the same, Article III. As *Filartiga* points out, The Alien Tort Statute, 28 U.S.C. 1350, does not grant new rights to aliens, nor does it create a new jurisdictional basis. It simply opens the federal courts to adjudication of rights by aliens under federal question jurisdiction for claims recognized by international law. The jurisdiction of this Court, pursuant to § 1331 and § 1350 therefore are the same. This jurisdictional basis is the violation of international law which creates a federal question because international law is part of the federal common law and the laws of the United States.

VII. THIS COURT HAS JURISDICTION OVER THE CAUSES OF ACTION OF ALL PLAINTIFFS AGAINST NAAA PURSUANT TO 28 U.S.C. 1331 AS THEY ARISE UNDER THE TREATIES OF THE UNITED STATES

All of the plaintiffs have causes of action arising under the enumerated treaties. These treaties, when considered in the context of their purpose, are the kinds of

treaties which give rise to private causes of action. The interpretation and administration of these treaties presents a pivotal, substantive issue, the determination of which will have a direct impact on the plaintiffs' success or failure and involve construction of the treaties of the United States, which constitute laws of the United States. The sections of the treaties relied on are primarily of a judicial nature, can be interpreted by judicial tribunal, and confer rights upon individual citizens. The apparatus for effectuating the rights conferred by these treaties already exist in the judicial system of the United States and no new mechanisms need be enacted in order for the courts to enforce those rights.

The ratification of a treaty by the United States makes it the law of the United States. No legislation is necessary to give it the effect of law. This principle was confirmed by the United States Supreme Court in *Asakura v. City of Seattle,* 265 U.S. 332 (1924), in which the Court states at p. 341: "It [a treaty] stands on the same footing of supremacy as do the provisions of the Constitution and laws of the United States. It operates of itself without the aid of any legislation, state or national; and it will be applied and given authoritative effect by the courts." The same holding was reached by the United States Supreme Court later, in *Bacardi Corporation v. Domenech,* 311 U.S. 150 (1940). See also, *United States v. A. L. Burbank and Company, Ltd.,* 525 F.2d 9 (2d Cir. 1975).

The test as to when treaties confer private rights on citizens of the United States was structured by the United States Supreme Court in *Head Money Cases,* 112 U.S. 580 (1884). The ruling in this case has been the fundamental

basis utilized by federal courts to consider the question of private rights created by treaties. The Court held as follows:

> . . . a treaty may also contain provisions which confer certain rights upon the citizens or subjects of one of the nations residing in the territorial limits of the other, which partake of the nature of municipal law, and which are capable of enforcement as between private parties in the courts of the country. . . . The Constitution of the United States places such provisions as these in the same category as other laws of Congress by its declaration that 'this constitution and the laws made in pursuance thereof, and all treaties made or which shall be made under authority of the United States, shall be the supreme law of the land'. A treaty, then, is the law of the land as an act of Congress is, whenever its provisions proscribe a rule by which the rights of the private citizen or subject may be determined. And when such rights are of a nature to be enforced in a court of justice, the court resorts to the treaty for the rule of decision for the case before it as it would to a statute.

An examination of the treaties cited by the plaintiffs demonstrates (a) that they confer certain rights on individuals; (b) that these rights partake of the nature of municipal law; and (c) they are capable of being enforced as between private parties in the courts of this country without the enactment of any new legislation. Consequently, these treaties, pursuant to the ruling of the Supreme Court in *The Head Money Cases,* give rise to private causes of action and those causes of action are to be enforced in the federal courts.

An instructive case concerning the existence of private rights pursuant to the kind of treaties enumerated by the plaintiffs is *The People of Saipan v. United States De-*

partment of Interior, 502 F.2d 90 (9th Cir. 1974). The plaintiffs in the *Saipan* case claimed they had a private right of action based on the Trusteeship Agreement pursuant to which the United States was authorized to administer the territory of Micronesia. The court found that the plaintiffs indeed had a private right of action pursuant to that Agreement and more specifically, pursuant to the section of the Agreement which provided that the United States was required to "promote the economic advancement and self-sufficiency of the inhabitants, and to this end . . . regulate the use of natural resources" and to "protect the inhabitants against the loss of their lands and resources . . ." On the basis of this language and this language alone, and without any enabling legislation, the Ninth Circuit reached this conclusion.

The Court in the *Saipan* case held at p. 97 that

> The extent to which an international agreement establishes affirmative and judicially enforceable obligations without implementing legislation, must be determined in each case by reference to many contextual factors: the purposes of the treaty and the objectives of its creators, the existence of domestic procedures and institutions appropriate for direct implementation, the availability and feasibility of alternative enforcement methods, and the immediate and long-range social consequences of self or non self-execution.

Relying on the test just quoted, the Court in *Saipan* held that the preponderance of features in the Trusteeship Agreement suggest the intention to establish direct affirmative and judicially enforceable rights.

> The issue involves the local economy and environment, not security; the concern with natural resources and the concern with political development are explicit in

> the agreement and are general international concerns as well; the enforcement of these rights requires little legal or administrative innovation in the domestic forum; and the alternative forum, the Security Council, would present to the plaintiffs obstacles so great as to make the rights virtually enforceable. 502 F.2d at p. 97.

Utilizing the test formulated by the Ninth Circuit, it would seem abundantly clear that the treaties relied upon by the plaintiffs create private rights of action against the defendants in this case, including NAAA. The conferring of basic human rights, the freedom from torture, terror, being taken as a hostage and genocide, would seem to be even more appropriate for judicial enforcement than issues involving the local economy and the environment.

It is interesting to note that the cases cited by NAAA in its Memorandum do not necessitate or even suggest a contrary conclusion. In *Diggs v. Richardson,* 180 U.S. App. D.C. 376, 555 F.2d 848 (1976), the United States Court of Appeals for the District of Columbia was called upon to determine whether a United Nations Security Council resolution calling upon member states not to have any dealings with South Africa, created private rights of action. Firstly, it should be noted that the Court of Appeals did not throw out the cause of action because it relied on a United Nations Security Council resolution, but instead, went ahead to examine the nature of that resolution to determine the possible rights of the plaintiffs. Therefore, the Court of Appeals must have concluded that private rights of action can be premised upon United Nations Security Council resolutions.

Secondly, the nature of the resolution under consideration in Diggs was clearly geared to foreign relations of countries and not to judicially enforceable rights. Judge Leventhal in the opinion so found. Judge Leventhal, in reaching his opinion, adopted with approval the ruling of the Supreme Court in *The Head Money Cases* discussed above. The Court held at p. 851:

> Applying this kind of analysis [*The Head Money Cases* analysis] to the particular Security Council Resolution on which plaintiffs rely, we find that the provisions here in issue were not addressed to the judicial branch of our government. They do not by their terms confer rights on individual citizens; they call upon governments to take certain actions.

Applying the test developed by Judge Leventhal and employing *The Head Money Cases* analysis, the contrary conclusion would be reached with regard to the treaties relied on by the plaintiffs. Consequently, these treaties create a private right of action on behalf of the plaintiffs.[27]

The NAAA, in its Memorandum, has relied upon *Huynh Thi Anh v. Levi,* 586 F.2d 625 (6th Cir. 1978) to support its proposition that the Geneva Convention Relative to Protection of Civilian Persons in Time of War, does not give rise to a cause of action with regard to the tortious

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[27] The decision of the United States Court of Appeals for the Fifth Circuit in *United States v. Postal,* 589 F.2d 862 (1979), also is not contrary to the conclusion that the plaintiffs herein have private rights of action under the enumerated treaties. In that case, the Court pointed out that in order for the treaty to have any impact whatsoever, Congress would have had to provide monetary funds for its implementation. There is not such congressional impediment in our cases to finding a private right of action under the treaties.

conduct alleged in our complaints. A reading of that case quickly indicates that it does not stand for that proposition at all. What the court did say was that Articles 24 and 49 of that Convention relating to education of children separated from parents by war did not give rise to a private cause of action because *that language* was vague, very general, and "does not answer the custody question presented by this case." In no way did the Sixth Circuit hold that the Convention could not under appropriate circumstances give rise to a private cause of action.

An examination of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, indicates that its essential purpose is directed to protecting the rights of persons who are of a civilian nature. It confers individual rights on such persons. It describes in detail that these individuals are to be free from acts of torture, terror, hostage-taking and genocide. The rights given to individuals are clear, enforceable and unmistakable. They are enforceable in United States courts without the enactment of any new legislation and without the Congress providing any additional funds.

The NAAA, in its Memorandum, went through a cursory discussion of the other treaties relied on by the plaintiffs. There are many misstatements in those discussions, for example, the United States is a signatory to the American Convention on Human Rights. We have already seen that the Geneva Convention Relative to the Protection of Civilian Persons in Time of War creates private rights of action which are enforceable and should be enforced in this Court. Since only one treaty is necessary to sustain jurisdiction, we will only highlight a few additional treaties as illustrative of the overall principle.

The Second Circuit in the *Filartiga* case, commented upon the significance of the Universal Declaration of Human Rights. The Court commented that the Declaration no "longer fits into the dichotomy of 'binding treaty' against 'non-binding pronouncement' but is rather an authoritative statement of the international community." 630 F.2d at 883.

As such, in applying the rationale of Judge Leventhal in the *Diggs* case, the Universal Declaration of Human Rights should be construed as creating private rights enforceable by this Court. It unquestionably confers individual rights and defines fundamental freedoms capable of being enforced by a judicial tribunal. Those rights are not inconsistent with, and in fact, are parallel to, our own Bill of Rights. To permit a private right of action under the Universal Declaration of Human Rights would do nothing more than permit the principles of our Bill of Rights to be utilized in cases involving aliens and actions outside of the United States. Such an application of fundamental human rights law is exactly what is mandated by the United States incorporating international law into its federal common law, as is evidenced by the language of 28 U.S.C. 1350.[28]

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[28] The United States District Court for the Northern District of Illinois, in *The United States v. Steinberg*, 478 F.Supp. 29 (1979), held, "the United Nations Charter, a treaty ratified by the United States, is a part of the supreme law of the land. *Balfour, Guthrie & Company v. United States*, 90 F.Supp. 831 (N.D. Cal. 1950)." As such, the Charter also would give rise to a private cause of action on behalf of the plaintiffs in this case since it too, confers individual rights capable of judicial enforcement.

Where a complaint is drawn so as to claim a right to recovery under the laws or treaties of the United States, the federal court has subject matter jurisdiction unless the federal question alleged is immaterial or wholly insubstantial and frivolous. *Hartigh v. Latin,* supra. If there is any foundation or possibility to the claim of federal question jurisdiction, then the Court is to deny a motion to dismiss on the basis of lack of federal question jurisdiction. *Payne v. Government of the District of Columbia,* supra. These holdings of the United States Court of Appeals for the District of Columbia are consistent with the pronouncement of the Supreme Court in *Duke Pawer Company v. Carolina Environmental Study Group, Inc., et al.,* 438 U.S. 59 (1973), when the court held, "For purposes of determining whether jurisdiction exists under § 1331(a) to resolve appellee's claims, it is not necessary to decide whether appellee's alleged cause of action against the NRC based directly on the Constitution is in fact a cause of action 'on which [appellee's] can actually recover'. *Bell v. Hood,* 327 U.S. 678, 682 (1946). Instead the test is whether 'the cause of action alleged is so *patently without merit* as to justify . . . the court's dismissal for want of jurisdiction.' "

Certainly, it cannot be said that the assertion of federal subject matter jurisdiction based on the treaties enumerated by the plaintiffs is so patently without merit, is so immaterial and so insubstantial as to warrant dismissal.[29]

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[29] Since the plaintiffs believe the arguments already advanced are dispositive of defendant's Motion of Dismiss, they address summarily herein their private causes of action under the enumerated statutes of the United States. This Court has jurisdiction over the causes of action of all plaintiffs

(Continued on next page)

VIII. THE COMPLAINTS OF PLAINTIFFS WERE FILED WITHIN THE APPLICABLE LIMITATIONS PERIOD

A. PLAINTIFFS' CAUSES OF ACTION IN COUNTS II THROUGH V OF THE COMPLAINTS ARE GOVERNED BY THE 3-YEAR STATUTE OF LIMITATIONS OF D.C. CODE § 12-301(8).

The three-year limitation period provided for in D. C. Code § 12-301(8) applies to the causes of action asserted in Counts II through V because no other limitation provision in the D. C. Code is analogous to these claims.

Counts II through IV of the Complaint allege, respectively, tortious actions in violation of the law of nations, tortious actions in violation of the treaties of the United States and tortious actions in violation of the laws of the United States.[30] The defendant NAAA argues that the allegations in these counts merely apply different labels to the common law tort claims alleged in Count I and, hence, are governed by the one-year period of limitations prescribed by § 12-301(4) for "libel, slander, assault, battery, mayhem, wounding, malicious prosecution or false imprisonment." NAAA's Memorandum at 30. Leaving aside for the moment the fact that several of the intention-

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under 28 U.S.C. 1331 as they arise under the statutes of the United States, and thus the laws of the United States. See *Cort v. Ash*, 422 U.S. 66 (1975); *J. I. Case Co. v. Borak*, 377 U.S. 426 (1964); *Abrahamson v. Fleschner*, 568 F.2d 862 (2d Cir. 1978); *Common Cause v. Democratic National Committee*, 333 F.Supp. 803 (D.D.C. 1971).

30 Count V alleges a conspiracy to commit the aforementioned tortious actions.

al torts alleged in Count I are not among those specifically enumerated in § 12-301(4), the defendant's argument fundamentally misperceives the nature of the claims advanced in Counts II through V.

A tort, generally speaking, is an invasion of a legally protected interest that results in compensable damage. See *Federal Jurisdiction of International Human Rights Claims: The Alien Tort Claims Act After Filartiga v. Pena-Irala,* supra, note 140 at 88. As is explained in a prior section of this Memorandum, the tort claims alleged in Counts II through V are qualitatively different from the common law intentional torts alleged in Court I. These tort claims are different from the common law tort claims asserted in Count I because the legally protected interests at stake and the nature and purpose of the tortious conduct at issue are different.

In Count II, plaintiffs are seeking damages for injuries and death proximately resulting from the intentional invasion of interests protected by the law of nations. The law of nations does not protect a person from simple assault, battery or false imprisonment. Where, as in the instant case, internationally recognized human rights have been brutally violated by acts of terrorism aimed not just at the individual but also at the government of a state and the international community, the law of nations affords a distinct right of recovery. See *Filartiga v. Pena-Irala,* supra, 630 F.2d at 888-889.

The treaties and statutes of the United States relied upon by plaintiffs in Counts III and IV protect those rights expressly or impliedly created by the language of the treaties or statutes which are distinct from and differ-

ent in nature and kind from the simple torts of assault, battery and false imprisonment.

An argument similar to that advanced by defendant herein, raised in support of a motion to dismiss for lack of subject matter jurisdiction, was rejected by the D. C. Circuit in *Payne v. Government of District of Columbia,* supra. In *Payne,* plaintiffs' asserted claims based upon violation of their Fifth Amendment rights arising out of the action of a District of Columbia police officer in allegedly wilfully and maliciously aiming and several times discharging a firearm at plaintiffs while they occupied an automobile. In the course of rejecting the District of Columbia's argument that the case was a simple tort case, the outcome of which depended exclusively on common law principles, the Court noted:

> It would appear that *the interests protected by Federal Constitutional law and local assault law are not congruent* and that *injuries inflicted by officers acting under color of state law are significantly different in kind from those resulting from acts of private persons. Payne v. Government of the District of Columbia,* supra, note 32, 182 U.S. App. D.C. at 196, 559 F.2d at 817 (per Robinson C.J. with Tamm C.J., concurring in the result.) [Emphasis added]

Similarly, in the instant case, the legal injuries for which redress is sought and the legal interests that the federal causes of action asserted in Counts II, III, IV and V seek to vindicate differ significantly in kind from those addressed by the common law torts of assault, battery and false imprisonment.

Where a person seeks vindication of a federal right (and this includes rights under the law of nations incorporated in the federal law) for which Congress has not pre-

scribed a limitations period, the Federal Court will adopt the period of the most analogous statute of the state in which it sits, unless adoption of this period would conflict with the federal policy underlying the cause of action or would amount to a discriminatory restriction of a federal right of action. *Laffey v. Northwest Airlines, Inc.*, 185 U.S. App. D.C. 322, 567 F.2d 429 (1976), *cert. denied*, 434 U.S. 1086.

Since the legal interests protected by the federal rights that form the basis for plaintiffs' claims in Counts II through V are "significantly different in kind" from those protected by the common law causes of action for assault, battery and false imprisonment, D. C. Code § 12-301(8) is the most analogous state statute for plaintiff's federal claims. No D. C. Code limitation provision for specifically enumerated causes of action can be considered analogous. D. C. Code § 12-301(8) provides in such a circumstance that the applicable period of limitations is three years. This provision has been held to be sufficiently broad to include enforcement of federally-created rights for which Congress did not provide a specific limitations priod. *Cassel v. Taylor*, 100 U.S. App. D.C. 153, 243 F.2d 259 (1957); see also, *Laffey v. Northwest Airlines, Inc.*, 481 F. Supp. 199 (D.D.C. 1974). Since plaintiffs' federal causes of action were brought within the three-year limitations period prescribed by D. C. Code § 12-301(8), they are not barred by the statute of limitations.

Moreover, the one-year statute of limitations contained in the D. C. Code § 12-301(4) must not be applied to bar any of the federal claims of any of the plaintiffs

because to do so would create a conflict with the federal policies underlying those causes of action.

One of the recognized exceptions to the application of the most analogous state statute of limitations to a federal claim for which no federal limitation has been enacted is when to do so "would create important conflicts with the federal policy underlying the cause of action". *Laffey v. Northwest Airlines, Inc.*, supra, 185 U.S. App. at 359, 567 F.2d at 468. To the extent that § 12-301(4) was the most analogous state statute of limitations to the federal claims assered in Counts II through V, application of that provision to bar the claims of any of the plaintiffs would create just such a conflict with the federal policies underlying these causes of action and must be avoided.

In ratifying the treaties and enacting the statutes relied upon herein, including 28 U.S.C. 1350, it is reasonable to infer that Congress did not intend that the exercise of the federal rights thereby created was to be burdened by an unreasonably short state statute of limitations. This Court should borrow the particular limitations period prescribed by the District of Columbia "that best effectuates the federal policy involved." *Forresta' Village, Inc. v. Graham,* 179 U.S. App. D.C. 225, 227, 551 F.2d 411, 413 (1977). The federal policy underlying the creation of the federal rights relied upon by the plaintiff can best be effectuated by the borrowing of the three-year limitations period of D. C. Code § 12-301(8), which would enable the federal claims of all plaintiffs to be vindicated.

B. PLAINTIFFS' CAUSES OF ACTION IN COUNT I OF THE COMPLAINTS FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AND INTENTIONAL INFLICTION

OF CRUEL, INHUMAN AND DEGRADING TREATMENT ARE NOT BARRED BY THE ONE-YEAR LIMITATION PERIOD PROVIDED FOR IN D. C. CODE § 12-301(4) BECAUSE THEY ARE NOT AMONG THE TORTS SPECIFICALLY ENUMERATED THEREIN.

Section 12-301 of the D. C. Code provides a one-year statute of limitations for claims for "libel, slander, assault, battery, mayhem, wounding, malicious prosecution and fase imprisonment." D. C. Code § 12-301(4). Two of the claims set forth in Count I of the complaint, specifically the claims for intentional infliction of emotional distress and intentional infliction of cruel, inhuman and degrading treatment, are not among those enumerated in § 12-301(4). The defendant NAAA contends that these two tort claims are "nothing more than supplemental descriptions of conduct which is fully encompassed by the traditional common law intentional torts of assault, battery and false imprisonment." NAAA's Memorandumm at 30. This characterization of these twc Count I claims is wholly inaccurate.

The intentional infliction of emotional distress is recognized as an actionable tort, distinct and independent from the intentional torts of assault and battery. See Prosser, *Law of Torts*, (4th Ed. 1971) § 12 at 56-59; Second Restatement of Torts, § 46, Comment K. The surviving plaintiffs and the decendents in these cases have suffered severe and permanent emotional trauma as a result of *inter alia* observing the killing and maiming of their loved ones and others during the course of this terrorist attack. The emotional distress engendered by experiencing these events is a compensable harm, wholly

distinct from any personal injury or apprehension of personal injury which they themselves suffered. As a result, this cause of action is not governed by the one-year statute of limitations in D. C. Code § 12-301(4).

Similarly, the intentional infliction of cruel, inhuman and degrading treatment is a tort distinct from those specifically enumerated in D. C. Code § 12-301(4). This tort, while encompassing some of the same elements as battery and false imprisonmment, is distinguished by the necessity of showing an intent to inflict treatment upon a person of such extreme barbarity as to be qualitatively different from mere unconsented to touching or unconsented to curtailment of freedom of movement. As a result, this cause of action is also not governed by the one-year statute of limitations in D. C. Code § 12-301(4).

NAAA further argues that, even if these two claims in Count I do state distinct causes of action, the intent of Congress must have been to include all intentional tort claims of the type asserted in Count I within D. C. Code § 12-301(4). Defendant cites no authority for this proposition.

Even a cursory reading of the language of § 12-301 reveals the fallaciousness of this argument. After listing in subsections, seven specific actions or sets of actions for which specific limitations periods are prescribed, it states: ". . . (8) for which a limitation is not otherwise *specifically prescribed*—three years." D. C. Code § 12-301(8). [Emphasis added] The inclusion of this general provision evidences a clear legislative intent that the seven preceding sections and the other limitations provisions scattered throughout the D. C. Code were meant to apply only to the

specific actions enumerated therein and to no others. See also *Gibson v. Gibson,* 240 Ark. 827, 402 S.W.2d 647 (1966) (a statute of limitations applies only to those actions that are specifically enumerated therein). All causes of action not enumerated in one of these sections were to be governed by the three-year general statute of limitations contained in § 12-301(8).

Moreover, where there is substantial doubt as to which of two periods of limitation is applicable, the longer periods should be held to apply. *Sonne v. Sachs,* 314 A.2d 194 (Del. 1978); *Mathews v. Travelers Indemnity Ins. Co.,* 245 Ark. 247, 432 S.W.2d 485 (1968); 51 Am.Jur.2d, Limitation of Actions § 63 (1970).

Plaintiffs' Count I claims for intentional infliction of emotional distress and intentional infliction of cruel, inhuman and degrading treatment are not barred by the statute of limitations because they were brought within the applicable three-year statute of limitations contained in D. C. Code § 12-301(8).

C. TO THE EXTENT THAT THE ONE-YEAR LIMITATIONS PERIOD OF D. C. CODE § 12-301(4) IS APPLICABLE TO ANY OF THE CLAIMS OF PLAINTIFFS AS ASSERTED IN THE COMPLAINTS, THE RUNNING OF THE STATUTE OF LIMITATIONS WAS TOLLED BY NAAA'S INTENTIONAL CONCEALMENT OF ITS INVOLVEMENT IN THE ACTIONS GIVING RISE TO PLAINTIFFS' CLAIMS.

It is established beyond dispute that:

Read into every statute of limitations, including the adoption of an analogous local statute of limitations, is the equitable doctrine that in case of defendant's

> fraud or deliberate concealment of material facts relating to his wrongdoing, time does not begin to run until plaintiff discovers, or by reasonable diligence could have discovered, the basis of the lawsuit. *Fitzgerald v. Seamans,* 188 U.S. App. D.C. 175, 183, 553 F.2d 220, 228 (1977); see also *Hulmberg v. Armbrecht,* 327 U.S. 392, 396-97 (1946).

In the instant case, NAAA has engaged in a consistent course of conduct of intentionally concealing their connection to the acts giving rise to plaintiffs' claims. Indeed, this pattern of concealment continues to this very day. See Affidavit of Joseph B. Baroody filed in support of NAAA's Motion to Dismiss. Plaintiffs did not discover, and with the exercise of due diligence, could not have discovered, facts linking the NAAA to this terrorist act until shortly before the filing of the complaints. Under such circumstances, the running of the statute of limitations must be considered to have been tolled by NAAA's intentional concealment of facts evidencing its liability for plaintiffs' injuries.

D. IRRESPECTIVE OF WHICH STATUTE OF LIMITATIONS IS FOUND TO BE APPLICABLE, NONE OF THE CLAIMS OF THE MINOR PLAINTIFFS CAN BE BARRED BY THE STATUTE OF LIMITATIONS.

Many of the persons killed or maimed in this terrorist attack were children under the age of 18. The D. C. Code provides that, when any person has a cause of action which accrues prior to his reaching 18 years of age, the statute of limitations is tolled until he reaches that age. D. C. Code § 12-302(a)(1). Hence, none of the claims of any of the plaintiffs in these actions who were under age 18 at the time the terrorist attack occurred, and did not

reach age 18 before one year prior to the filing of the complaints, can be barred by the statute of limitations, irrespective of which statute of limitations is found to be applicable.

IX. CONCLUSION

WHEREFORE, for all of the foregoing reasons, plaintiffs respectfully request that this Court deny the motion of National Association of Arab Americans to dismiss for lack of subject matter jurisdiction and for expiration of the limitations period.

Respectfully submitted,

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APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action Uo. 81-0563

HANOCH TEL-OREN, on behalf of the deceased, Imry Tel-Oren, *et al.*,

Plaintiffs,

v.

LIBYAN ARAB REPUBLIC, *et al.*,

Defendants.

Civil Action No. 81-0564

HANOCH TEL-OREN, *et al.*,

Plaintiffs,

v.

LIBYAN ARAB REPUBLIC, *et al.*,

Defendants.

REPLY MEMORANDUM OF DEFENDANT NATIONAL ASSOCIATION OF ARAB AMERICANS IN SUPPORT OF ITS MOTION TO DISMISS

RECEIVED
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 81-0563

HANOCH TEL-OREN, on behalf of the deceased, Imry Tel-Oren, *et al.*,

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Plaintiffs,

v.

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Defendants.

REPLY MEMORANDUM OF DEFENDANT NATIONAL ASSOCIATION OF ARAB AMERICANS IN SUPPORT OF ITS MOTION TO DISMISS

This memorandum is submitted on behalf of the National Association of Arab Americans, Inc. ("NAAA") in response to the Consolidated Memorandum of Points and Authorities Submitted by Plaintiffs in Opposition to the Motion of National Association of Arab Americans to Dismiss the Complaints for Lack of Subject Matter Jurisdiction and for Expiration of the Limitations Period (hereinafter, the "Memorandum in Opposition").

INTRODUCTION

In the ensuing discussion the NAAA intends to make the following points:

— *First,* the Memorandum in Opposition makes clear what the NAAA has suspected all along: plaintiffs seek to hold the NAAA liable for expressing and otherwise being associated with political views which are inimical to those of plaintiffs or of whomever is really behind this litigation. However, the political views which are attributed by plaintiffs to the NAAA are Constitutionally protected.

— *Second,* in any event, plaintiffs grossly mischaracterize the political views which they attribute to the NAAA.

— *Third,* plaintiffs fail to rebut the legal arguments made by the NAAA in its Memorandum in Chief.

— *Fourth,* even viewing plaintiffs' claims in the most favorable possible light, the only legal theory upon which they could conceivably go to trial against the NAAA is one of conspiracy. Nevertheless, they have not alleged — and cannot in good conscience allege — a legally sufficient conspiracy claim against the NAAA.

— *Fifth,* given the posture of these cases, plaintiffs should not be permitted to go forward unless and until they satisfy this Court that there is at least a shred of evidence that the NAAA in any way participated in the acts of which plaintiffs complain.

ARGUMENT

Point One: Plaintiffs Seek to Hold the NAAA Liable for Its Political Views.

As noted both in its Answers to the Complaints herein and in its Memorandum of Points and Authorities

in support of its Motion to Dismiss (the "Memorandum in Chief"), the NAAA is of the firm conviction that the instant lawsuits, as against the NAAA, are totally without foundation in fact, were vexatiously brought, politically motivated, and intended merely to hamper the NAAA and its members in the conduct of their legitimate educational, civic and political activities within the United States. The Memorandum in Opposition demonstrates beyond any doubt that the NAAA's conviction is fully justified. The NAAA has challenged plaintiffs to furnish even a scintilla of evidence in support of the irresponsible, inflammatory and slanderous allegations they have made against this highly regarded organization.[1] In their Memorandum in Opposition plaintiffs have come up with zero — thus exposing the utter speciousness of their claims against the NAAA.

Indeed, rather than successfully rebutting the NAAA's arguments that this Court lacks jurisdiction over their claims against the NAAA, for which no factual basis has been alleged in any event, plaintiffs' Memorandum in Opposition has instead raised serious Constitutional issues. The Memorandum in Opposition makes clear that plaintiffs' theory of this case, as against the NAAA, involves Constitutionally protected free speech by American citizens and their First Amendment rights of free association.

Plaintiffs' Memorandum in Opposition crystallizes what their Complaints implied — that the NAAA itself

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[1] See Memorandum in Chief at 27, 3-4, and letters from Presidents Ford and Carter, attached as Appendices to Affidavit of Joseph D. Baroody (hereinafter "Baroody Affidavit"), which was Exhibit 1 to the Memorandum in Chief.

had no participation whatsoever in the March 11, 1978 bus incident. Regardless of the relative merit of plaintiffs' assertions of others' involvement in the incident, plaintiffs now concede that the bus incident does not in any way implicate the NAAA. Thus, according to plaintiffs, "The March 11 attack . . . was part of an overall plan designed by the *PLO and Libya* . . . ."[2] Also according to plaintiffs, "the *PLO and Libya* contemplated committing the act of genocide against the population of Israel," and the "March 11 attack was part of this act of genocide."[3] Indeed, the Memorandum in Opposition is replete with attribution of responsibility, for every specific aspect of the training and planning for, and the implementation of the bus attack, to the El Fatah, the PLO, and Libya[4] — not to the NAAA.

Similarly, plaintiffs concede that the NAAA played no role in the purchase of weapons used in the bus incident. The Memorandum in Opposition alleges only that "much of the arms and equipment used . . . in the March 11 attack were obtained by the *PLO through Libya*," allegedly through the hiring of American citizens — none of whom are claimed to have had any affiliation with the NAAA — to procure weapons in the United States.[5]

Plaintiffs are also unable to allege that the NAAA raised funds for the March 11 incident. Plaintiffs' only

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2 Memorandum in Opposition, 4.

3 Memorandum in Opposition, 4.

4 See, for example, Memorandum in Opposition at 1-2, 4 and 6.

5 *Id.* at 6.

specific allegation of fund-raising in their Memorandum in Opposition is not in any way connected with the bus incident; relates to activities in 1976 and 1977; and, plaintiffs concede, involves groups not even alleged to have been affiliated with the NAAA.[6] Thus, with respect to the NAAA, plaintiffs are able to make nothing but bald, conclusory and — in light of their specific allegations against others — meaningless, allegations of "conspiracy," "assistance" and "legal responsibility."

Being unable to marshal a single shred of evidence linking the NAAA to the bus incident itself, plaintiffs are forced to resort to the McCarthyist accusatory technique of "guilt by association." Plaintiffs seek to impose liability on the NAAA, not for what the NAAA did, but because its *objectives* are alleged to be "virtually identical to the aims and objectives of the PLO."[7] Instead of pointing to even one act of the NAAA evidencing its alleged participation in the incident — of which there are none, as plaintiffs well know — plaintiffs do nothing but pounce upon selected portions of certain statements made by a member and former President of the NAAA in the exercise of his individual First Amendment right of free speech.[8] Plaintiffs quote Professor Hisham Sharabi,

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6 *Id.* at 6-7 and 8-9.

7 Memorandum in Opposition, 8.

8 The NAAA was, frankly, puzzled by plaintiffs' statements concerning supposed "contradictions" in Mr. Baroody's March 21, 1978 letter to NAAA members (Appendix H to Memorandum in Opposition), and the March 15, 1978 NAAA press release (Appendix G to Baroody Affidavit, Exhibit 1 to Memorandum in Chief), as well as by plaintiffs'

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a noted Palestinian intellectual who is Senior Professor of History at Georgetown University, as follows:

— in an interview conducted several *months after the bus incident,* Professor Sharabi is quoted as as having said "I don't condemn the use violence, as such, when it is carried out in a just cause, such as that of the Palestinians."[9] Professor Sharabi was also quoted as having said that the March 11 incident showed that Palestinians are willing "to hurl their bodies against the monster."[10]

— Professor Sharabi is purported to have stated in an introduction to a book, *published in 1973,* describing the Palestinian resistance movement subsequent to the Israeli occupation of Palestine, that "the organized violence of the oppressed Palestinians" and their "armed struggle" had enabled the Palestinian resistance movement for self-determination to "organiz[e] the people for carrying out political struggle."[11] Professor

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apparent attempt to relate the letter to some kind of NAAA involvement in the March 11 bus attack. A review of the two documents makes abundantly clear what they are. The press release, issued four days after the bus attack, condemns terrorism as manifested in both the March 11 incident and the Israeli invasion of Lebanon on March 14. The March 21 letter to NAAA members discusses what had by that time become the Israeli occupation of Southern Lebanon; decries the death of almost 1,000 Lebanese and Palestinian civilians caused by Israeli air bombardment of Lebanese villages and refugee camps; and urges the members to petition their Senators and Congressmen to take steps to achieve Israeli withdrawal and to provide humanitarian relief to those left hurt and/or homeless. If there are any contradictions in these documents, they totally escape the NAAA.

9 Memorandum in Opposition, 3.

10 *Id.*

11 *Id.* at 7.

Sharabi is alleged to have made similar statements in another 1972 publication which plaintiffs fail to identify in any meaningful way.[12]

— Finally, plaintiffs baldly assert that Professor Sharabi "was and remains a close personal friend of Yasar [sic] Arafat, leader of the PLO, and was and remains in close consultation with Arafat. Sharabi has actually been named as a possible member of a PLO government in exile."[13]

Even a first year law student would recognize that no American court would counterance the imposition of evil liability solely on the expression of an opinion on a political issue. The adoption of such a legal theory would obviously have a significant and Constitutionally impermissible chilling effect on the exercise of First Amendment rights. Even if the NAAA had made the statements attributed to Professor Sharabi by plaintiffs, and even if such statements had involved the bus incident at issue (which they did not), such statements constitute clearly protected speech. It is an axiomatic principle of Constitutional law that such statements cannot serve as a basis for finding the NAAA liable for the tortious conduct of others. *See, e.g., Brandenburg v. Ohio,* 395 U.S. 444, 447 (1969) ("the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law viola-

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12 *Id.* at 7-8.

13 *Id.* at 4. Plaintiffs' theory of the NAAA's liability based *solely* on the foregoing statements is so patently defective that we feel no need even to raise the question of the NAAA's adoption of Professor Sharabi's individual statements—many of which were made even before the NAAA was organized in 1973.

tion except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."); *Noto v. United States,* 367 U.S. 290 (1961); *Yates v. United States,* 354 U.S. 298, 321 (1957) ("advocacy [of the doctrinal justification of forcible overthrow, with the intent to accomplish such overthrow], even though uttered with the hope that it may ultimately lead to violent revolution, is too remote from concrete action . . . ."). As discussed further below, the statements attributed to Professor Sharabi were made in a newspaper interview and in a scholarly journal. As such, they do not even remotely approach the kind of incitement for which the NAAA might conceivably be held liable.

Plaintiffs' suggestion that tort liability can be based solely upon the political views of persons with whom one associates is equally repugnant to basic First Amendment principles. *See Healy v. James,* 408 U.S. 169, 185-86 (1972) ("it has been established tha 'guilt by association alone . . .' is an impermissible basis upon which to deny First Amendment rights," and "the Court has consistently disapproved . . . denying rights and privileges solely because of a citizen's association with an unpopular organization."); *Sawyer v. Sandstrom,* 615 F.2d 311, 317 (5th Cir. 1980) ("knowing association with a group cannot be made a punishable act just because some of the group members are engaged in criminal conduct"). In consequence, this Court should reject plaintiffs' blatant attempt to bootstrap their baseless charges against the NAAA. Even if the NAAA did "share the general objectives of the PLO," that clearly affords no basis for NAAA responsibility for particular tortious acts.

Under plaintiffs' theory, American Irish Catholics who support the overall objective of the Irish Republic Army (the "IRA") — that is, the establishment of a separate Catholic state in Northern Ireland — would be liable for all senseless acts of violence committed by IRA members. The argument would go as follows: (1) the IRA is known to commit senseless acts of terror; (2) any active support of the IRA or its objectives, or recognition that the Irish resistance movement is an armed or violent struggle, must be equated to the encouragement and support of IRA terrorist activities; (3) such encouragement of terrorist activities constitutes a conspiracy to commit, or the "assistance" in the commission of, any specific terrorist act of the IRA (even if the American IRA supporter had nothing to do with that act). Thus, according to plaintiffs, if you support the IRA or its objectives — or, for that matter, any political movement that has any connection with violent activities, whether conducted by the entire group, a fraction of the group, or even a fanatic who claims association with the group — you had better not publicly express your support or you will face the prospect of billions of dollars in civil liability! Such a theory not only flies in the face of basic American Constitutional principles of free speech and association, but it could be applied to create civil liability for supporters of any movement that regularly, or even occasionally, is forced to resort to armed or violent struggle.[14]

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[14] Indeed, under plaintiffs' theory of this case, American supporters of Israel would find themselves facing enormous civil liabilities. Thus, Palestinian and other victims of Is-

(Continued on next page)

In short, the fact that certain NAAA members, and the NAAA itself, may have spoken out in favor of Palestinians self-determination, is irrelevant to the liability issues of this case.[15] And even if NAAA members have spoken out in support of armed or violent resistance by the Palestinian people, such expressions cannot support plaintiffs' allegations of liability against the NAAA for a particular act of terrorism.

(Continued from previous page)

rael's acts of violence—including the demolition of homes and businesses, the confiscation of property, the shooting of high school students who support Palestinian self-determination, the torture of political prisoners, the expulsion of political figures, the sanctioning of vigilante terrorist groups, and the bombardment of medical facilities and refugee camps in Southern Lebanon—could seek to hold American supporters of Israel civilly accountable for Israel's conduct merely on a showing that the supporters knew that Israel systematically engaged in such conduct. Indeed, the United Nations General Assembly, by vote of over two-thirds of the member nations, has recognized and deplored the fact that rights of Palestinians have been violated by Israel, as evidenced by General Assembly Resolutions 2792 C, D, and E of December 6, 1971, and 2851 of December 20, 1971, copies of which are attached hereto as Exhibits 1 and 2.

15 Moreover, the NAAA is not alone in taking this position. For example, the General Assembly of the United Nations, again by more than a two-thirds majority, has recognized and affirmed not only "the inalienable rights of all peoples, and in particular . . . the Palestinian people, to freedom, equality and self-determination," but it has also recognized "the legitimacy of their struggles to restore those rights," and has affirmed "man's basic human right *to fight for the self-determination of his people . . . .*" General Assembly Resolution 2787 of December 6, 1971, a copy of which is attached hereto as Exhibit 3 (emphasis added).

Point Two: Plaintiffs Grossly Mischaracterize the Political Views Which They Attribute to the NAAA.

In its Memorandum in Chief, the NAAA conscientiously refrained from addressing the politically and emotionally sensitive issues that underlie the pending lawsuits. Instead, it made a good faith effort to discuss only the legal issues this Court sought to have analyzed. However, because plaintiffs not only raised the political issues, but in doing so presented distorted, blatantly false, and inflammatory versions of those issues, the NAAA feels compelled to set the record straight.

In their Memorandum in Opposition plaintiffs carefully refrain from presenting Professor Sharabi's statements in context, provide no citation whatsoever for several of their conclusory and inflammatory accusations, and otherwise attempt to distort the true positions of Professor Sharabi and of the NAAA on the highly charged political issue of Palestinian self-determination.

Thus, plaintiffs totally mischaracterize the interview in which Professor Sharabi said that he did not condemn the use of violence when it is carried out in a just cause, and that the March 11 bus incident showed that Palestinians are willing "to hurl their bodies against the monster." In quoting out of context, plaintiffs would like this Court to believe that Professor Sharabi actually advocated the kind of violence exemplified by the bus incident. A reading of the reported interview in its entirety, however, reveals that nothing could be further from the truth. The interview as a whole, a copy of which is attached hereto as Exhibit 4, makes clear that Professor Sharabi favors a negotiated settlement of the Palestine question. Concerning such a settlement, he said:

> "A settlement [must be] based on full rights of Palestinians, particularly self-determination and complete withdrawal of Israel from occupied areas and total sovereignty for Palestinians. Anything short of that is inadequate. It must include the Gaza Strip and West Bank and East Jerusalem . . . .[16]

Moreover, with respect to the bus incident itself, Professor Sharabi expressed his dismay at the incident, calling it "politically unfortunate, humanly unfortunate," while likening it to tactics utilized by Israeli Prime Minister Begin when he headed the "terrorist group" known as the Irgun when Israel was first created in 1948.[17]

Even more flagrant is plaintiffs' reference to a nonexistent Sharabi introduction to a publication entitled *Palestine Lives: Interviews With Leaders of the Resistance.*[18] As the Court can see for itself, the introduction was written by the Honorable Clovis Maksoud, a noted Christian Lebanese intellectual who is currently Representative of the League of Arab States to the United Nations. The introduction contains not one word of those identified by plaintiffs as having been quoted from that source. Instead, it contains a thoughtful analysis of the development of the Palestinian resistance movement after the June 1967 Arab-Israeli war.

Plaintiffs again misrepresent and distort Professor Sharabi's views by quoting from an article which appeared in the Arabic publication *Shu'on Falastiniyeh* (Palestin-

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16 Exhibit 4 at D3.

17 *Id.*

18 See Memorandum in Opposition, 7. A copy of the actual introduction to that book is attached hereto as Exhibit 5.

ian Affairs).[19] In their Memorandum in Opposition, plaintiffs highlight Professor Sharabi's use of the words "organized Palestinian violence" in an effort, no doubt, to equate in the mind of the reader the terms "Palestinian violence" with "terrorism," "genocide," "holocaust" and other emotionally charged code words used by plaintiffs. The full article, entitled "Liberation or Settlement: The Dialectics of Palestinian Struggle," which appeared in English in the scholarly *Journal of Palestine Studies* (Winter 1973), is attached hereto as Exhibit 6.

Professor Sharabi's article makes clear that Palestinian resistance, and indeed violent struggle, is directed at a governmental structure—Zionism—with which the Palestinians (and other Arab countries) are still at war—and have been since 1948. Far from seeking the genocide of the Israeli people as suggested by plaintiffs, the Palestinian armed struggle of which Professor Sharabi wrote in 1972, sought to establish a secular democratic state within which Jews and Palestinians (Christian and Muslim) could live in harmony:

> The [Palestinian] organizations all share the conviction that liberation must in the end be *based on Palestinian-Jewish accord* outside the framework of Zionism. But the task of breaking the Zionist superstructure cannot be carried out by the Palestinians alone, in their capacity as an outside source. To succeed, this project must also become a Jewish undertaking . . . .[20]

Indeed, the notion of Jewish-Palestinian accord is a theme which runs consistently throughout Professor Shar-

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19 See Memorandum in Opposition, 7-8.

20 Exhibit 6 at 41 (emphasis added).

abi's article. He points out that Palestinians must "show convincingly (not only in ideological terms) that they are headed towards a socialist society, in which Jews have equal rights . . . ." And, further:

> The Palestinians' . . . fight is for their full human rights—including the fundamental right to live in democratic freedom in their own homeland (in this case, in a joint democratic state in which Jews now in Israel would enjoy equal rights with the Arabs).[21]

Given the foregoing context, even the passage from which plaintiffs quote Professor Sharabi in their Memorandum in Opposition makes clear the distinction between advocating the destruction of Zionism as a *political structure* and advocating violence against Israelis *per se*. The passage, set forth in full, reads as follows:

> [T]o the extent that Zionism constitutes a negation of the Palestinians, liberation must constitute a negation of Zionism. Within existing reality, political settlement can only mean a settlement based on the "unrealty" of the Palestinians, on their being reduced to permanent uprootedness—to refugees, to a stateless conglomeration of individuals, to a non-people. The opposition therefore presents itself in absolute terms: settlement cannot be achieved except by the dissolution of the Palestinian people—or by the dissolution of Zionism. Here the equation is between the dissolution of a *people* [the Palestinians] and the dissolution of a *structure,* specifically the overthrow of Israel's Zionist leadership and policy, the dismantling of its colonial apparatus, the abrogation of its theocratic and racist framework, etc., and its replacement by a humane, free, democratic structure.[22]

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21 Exhibit 6 at 42-43 (parentheses in original).

22 Exhibit 6 at 46 (emphasis in original).

Finally, plaintiffs' attempt to portray Yassir Arafat, the PLO, El Fatah, (and, by association, the NAAA), as having objectives that are limited to plotting and perpetrating "terrorist acts," "genocide" and "holocausts," is not merely a distortion, it is a denial of fact. It is well known, as reported by *The Wall Street Journal*, that the PLO is, in effect, 'a government-in-exile for the world's 3.5 million to four million Palestinians."[23] The PLO has "its own 'state department,' welfare agency, hospital chain [in 1979, consisting of 12 hospitals and 100 clinics], 'national' library, education department, think tank, press agency, radio network and tax-collection system."[24] The PLO in 1979 ran 33 factories, paid Palestinians pensions and other benefits estimated at $30 million a year, collected taxes ranging from 3% to 6% of gross salary from Palestinians all over the world, maintained diplomatic offices in more than 50 countries, and provided academic scholarships for thousands of students.[25] As the *Wall Street Journal* recognizes, the PLO, and its many divisions and factions, have numerous legitimate and admirable goals and purposes. Thus, "support" of the PLO or its "goals" cannot, under any circumstances, be blithely assumed to imply support for particular terrorist acts that may be carried out in the name of one faction or another of the PLO.

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23 R. Vicker, Not Just Guerillas, Wall St. J., October 22, 1979, 1. A copy of Mr. Vicker's article is attached hereto as Exhibit 7.

24 *Id.* See Exhibit 7.

25 *Id.* See Exhibit 7.

Point Three: Plaintiffs Fail to Rebut the Legal Arguments Made by the NAAA.

Not only have plaintiffs raised serious constitutional issues in their Memorandum in Opposition, but they also fail to overcome the substantial statute of limitations and jurisdictional hurdles identified by the NAAA in its Memorandum in Chief.

A. *The Statute of Limitation Issue.*

With respect to the statute of limitations issue, plaintiffs counter the NAAA's argument that the one-year limitations period of D.C. Code § 12-301(4) bars their action by stating, over and over, that their claims are not merely traditional assault, battery, and related intentional tort claims. Rather, they explain, their Count II through V claims "are different . . . because the legally protected interest at stake and the nature and purpose of the tortious conduct at issue are different."[26] Thus, plaintiffs contend that their claims arise under the "law of nations," based on their assertion that the acts allegedly perpetrated against plaintiffs on March 11 were "aimed not just at the individual but also at the government of a state and the international community."[27] Plaintiffs' arguments ignore two basic legal propositions which, when applied here, lead to the inescapable conclusion that plaintiffs' claims are time-barred.

First, as explained in the NAAA's Memorandum in Chief, in deciding which statute of limitations to apply a court must look to the substance of a plaintiff's claim rath-

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[26] Memorandum in Opposition, 29.

[27] Memorandum in Opposition, 29, 12.

er than to his descriptive language or the label he applies to his claim. (*See* Memorandum in Chief, 30-31). Here, plaintiffs allege that they were assaulted, threatened, imprisoned, battered, wounded, and suffered physical and mental injury during the bus attack. Plaintiffs' own *ipse dixit* statements aside, it is clear that the *substance* of plaintiffs' claims are encompassed by Section 12-301(4) which covers intentional torts.

Plaintiffs' frequent use of emotional code words such as "torture," "genocide," and "terrorism" in describing the tortious acts complained of, as well as their ceaseless incantation of the "law of nations," should not distract this Court from the required analysis of the *substance* of plaintiffs' claims. This is not meant to imply that plaintiffs' injury or suffering was necessarily any less than that alleged in the Complaints; merely that fear is fear, pain is pain, and injury is injury, regardless of where, by whom, or for what reasons it may have been inflicted. In enacting Section 12-301(4), Congress plainly intended to prohibit persons from sitting on known causes of action — those arising from intentional torts — by requiring such actions to be brought within a year. Plaintiffs' claims are therefore time-barred.

Second, plaintiffs' assertion that the alleged tortious conduct was aimed against the government of Israel and against "the international community" has no bearing whatsoever on the statute of limitations question. Plaintiffs do not assert claims for injury suffered by Israel or by the so-called international community. Of course, they would have no standing to do so in any event. However, even if the perpetrators of the bus incident did intend the attack as an act against Israel or the inter-

national community — a fact which is totally speculative at this time — the nature of *plaintiffs'* causes of action remains unchanged. Plaintiffs are still the alleged victims of particular intentional conduct that caused them injury. They are victims of intentional torts and their claims are barred by the one year statute of limitations.

Finally, plaintiffs' argument that their claims for the "intentional infliction of mental distress" and the "intentional infliction of cruel, inhuman and degrading treatment" are not covered by Section 12-301(4), must also fail. As noted in the NAAA's Memorandum in Chief, these so-called torts are not properly pleaded in the Complaints as separate causes of action. *(See* Memorandum in Chief, 29-30). Moreover, in the Memorandum in Opposition, plaintiffs provide no authority for their apparent belief that such "torts" are recognized as independent causes of action under D.C. law. Clearly, plaintiffs can request damages for the mental suffering they may have experienced as a result of the conduct of those who perpetrated the bus attack. Such an entitlement to *damages,* however, even if recognized by the Court, does not mean that plaintiffs have pleaded any causes of action separate from those covered by Section 12-301(4) for intentional torts. Plaintiffs' claims, therefore, are time-barred.[28]

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[28] Plaintiffs' one paragraph attempt to argue that the one-year statute was tolled as a result of "the NAAA's intentional concealment of its involvement in the actions giving rise to plaintiffs' claims," barely even merits a response. (Memorandum in Opposition, 33-34). If plaintiffs are serious about this allegation, it is clear that they must comply with Rule 9(b), Fed. R. Civ. P., and plead "with particularity" the circumstances of the alleged fraudulent concealment. *See Dayco Corp. v. Goodyear Tire & Rubber Co.,* 523 F.2d 389 (6th Cir. 1975).

B. *The Jurisdictional Issues.*

With respect to the jurisdictional issues, plaintiffs have apparently abandoned their claims of jurisdiction as to the NAAA under Sections 1330, 1332, and 1602-11, as well as their claims of Section 1331 jurisdiction based on violations of Title 18. They did not even bother to respond to the NAAA's contention that there is no jurisdiction under these sections. Plaintiffs' arguments concerning the only remaining jurisdictional issues — those based on Section 1331 for violation of federal common law and U.S. treaties, and on Section 1350 — fail to address the fundamental legal barriers to such jurisdiction which were raised in the NAAA's Memorandum in Chief.

Plaintiffs' Section 1331 argument has two parts. First, they argue that because the tortious conduct "of the PLO terrorists" is in violation of the law of nations, which is a part of the federal common law, this Court has Section 1331 jurisdiction over the NAAA. Second, they argue that because their causes of action arise under various U.S. treaties, this Court has a separate basis for jurisdiction under Section 1331.

Plaintiffs devote several pages of their Section 1331 discussion to a discourse on the law of nations, its relation to federal common law, the "hideous nature" of the tortious conduct complained of, and various treaties, resolutions and conventions. However, they never even mention the legal prerequisite to all Section 1331 jurisdiction — that the construction or application of federal law must be "a pivotal issue" in the case. There can be no Section 1331 jurisdiction unless a plaintiff's asserted claim "will be sustained by one construction of the [federal] law, or defeated by another . . . ." *First*

National Bank v. Williams, 252 U.S. 504, 512 (1920). Clearly, plaintiffs ignored this point because its application in their case results in a denial of subject matter jurisdiction under Section 1331. As noted in the NAAA's Memorandum in Chief, plaintiffs have not — and cannot — demonstrate the requisite "substantial nexus" between their claims and federal law (whether arising under the law of nations, common law, or U.S. treaties) to confer Section 1331 jurisdiction. *(See* Memorandum in Chief at 5-7). And, unless plaintiffs meet the threshold requirement of "substantial nexus," this Court need not even reach the complex questions of what constitutes the "law of nations" and just how it becomes part of the "federal common law." We submit that plaintiffs' civil damage claims herein can easily be adjudicated without the application or interpretation of any aspect of federal law, and therefore Section 1331 jurisdiction should be denied.[29]

In addition, plaintiffs also fail to provide any authority for their naked assertion that the treaties and other documents upon which they seek to base Section 1331 jurisdiction give rise to a private cause of action for damages. The law is clear that, in the absence of specific implementing legislation, a treaty, that is not self-executing, does not give rise to a private right of action. As was discussed at some length in the NAAA's Memorandum in Chief, none of the treaties or other materials cited by

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[29] This is the case notwithstanding plaintiffs' frequent reference, in their Memorandum in Opposition, to the so-called "tort" of "genocide." "Genocide" was not pleaded in the Complaints; moreover, it clearly has no bearing whatsoever on this lawsuit.

plaintiffs give rise to judicially enforceable private rights of action. (See Memorandum in Chief at 12-19).[30] Accordingly, in addition to the fact, discussed above, that such treaties lack a substantial nexus to plaintiffs' claims, they cannot serve as the basis of jurisdiction under Section 1331 because they provide no right of action.

Payne v. Government of District of Columbia, 559 F.2d 809 (D.C. Cir. 1977), cited by plaintiffs to support their assertion of Section 1331 jurisdiction, is inapposite. In *Payne,* the plaintiffs asserted that their Fifth Amendment rights had been violated by the allegedly willful and malicious discharge of a firearm at them by a District of Columbia police officer acting under color of law. They sought damages under the theory of *Bell v. Hood,*[31] and alleged federal jurisdiction under Section 1331. In their Memorandum in Opposition, plaintiffs cite *Payne* as authority for their assertion that their law of nations and treaty-based claims are different in kind from their common law claims and that they give rise to federal jurisdiction.[32]

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30 *Accord,* Blum & Steinhardt, *Federal Jurisdiction Over International Human Rights Claims: The Alien Tort Claims Act After Filargita v Pena Irala,* 22 Harv. Int'l. L. J., 53, 71 n. 82 (1981) (hereinafter "Blum & Steinhardt").

31 *Bell v. Hood,* 327 U.S. 678 (1946), recognized the existence of a private right of action for damages, against government officials acting under color of law, for invasion of Fourth and Fifth Amendment rights.

32 It should be noted at the outset that the court's action in *Payne* was a *per curiam* reversal of the district court's dismissal, and a remand for further proceedings. Each member of the panel wrote a separate opinion, concurring in

(Continued on next page)

The holding in *Payne* has no applicability to plaintiffs' claims herein because the situations presented are not even analagous. In *Payne*, the claim upon which federal jurisdiction was based arose out of a well-recognized private right of action under the Fifth Amendment. No such private right of action is recognized under any of the statutes or treaties upon which plaintiffs rely.[33]

Plaintiffs' argument concerning jurisdiction under Section 1350 is tortuously developed in their Memorandum in Opposition. It boils down to their urging this Court to find Section 1350 jurisdiction as to the NAAA because the tortious conduct complained of allegedly violates the law of nations. In making this argument, plaintiffs ignore the fact that they fail to meet the two threshhold requirements for Section 1350 jurisdiction.

Section 1350 only confers jurisdiction over an action that meets three criteria: it must be (1) brought by an alien; (2) for a tort; and (3) the tort must have been committed in violation of the law of nations or a treaty. Because plaintiffs include several United States citizens, the first requirement has not been met here. Further-

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the remand result. The two opinions *not* cited by plaintiffs (those of Judge Tamm and Judge MacKinnon), expressed serious doubts as to whether the asserted federal claim was substantial enough to invoke federal question jurisdiction. Both judges indicated a concern about plaintiffs' asserting a "factually baseless federal claim" merely to get into federal court. *See* 559 F.2d at 823-24 (Tamm, J. concurring in result) and at 830 (MacKinnon, J. concurring specially).

[33] It should be noted that Section 1350 is a *jurisdictional statute* and creates no substantive federal claims upon which plaintiffs can rely.

more, even if all plaintiffs were aliens, the second requirement has not—and cannot—be met as against the NAAA. Despite the fact that plaintiffs discuss at length the tortious conduct allegedly committed against them by the PLO and by Libya, plaintiffs do not make any allegations of specific conduct *by the NAAA* that can be said even to remotely resemble a tort.[34] Thus with respect to Section 1350 jurisdiction, it is not even necessary to reach the law of nations issue dwelt upon *ad nauseum* by plaintiffs because the necessary predicate to that inquiry—the commission of a tort *by the defendant* at issue—has not been pleaded as against the NAAA.[35]

Point Four: Plaintiffs Have Not Alleged—and Cannot Allege—a Legally Sufficient Conspiracy Claim Against the NAAA.

Any fair reading of the papers filed in connection with the pending motion reveals that plaintiffs have effectively conceded that the NAAA had no participation in the actual perpetration of the torts they alleged to have

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[34] As noted above, in the Complaints and in the Memorandum in Opposition plaintiffs assign specific responsibility for providing weapons, supplies, and training, fund-raising, planning and perpetrating the March 11 attack to various of the defendants *other than* the NAAA. Moreover, the making of the public statements cited by plaintiffs cannot be said to constitute a tort, nor can plaintiffs' conclusory allegations concerning common objectives or association be said to constitute actionable tortious conduct by the NAAA.

[35] Indeed, an analysis of plaintiffs' principal legal authority, *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980), suggests that the torts alleged in the Complaints are not within the catalogue of torts which confer subject matter jurisdiction under Section 1350, namely, genocide, torture, slavery and summary state execution. *See* Blum & Steinhardt at 87-97.

suffered.[36] Plaintiffs are therefore compelled to rely *solely* upon their conclusory allegations of the NAAA's supposed involvement in a "conspiracy." Not only are such allegations without any foundation in fact, but plaintiffs have not bothered even to allege the occurrence of any conversations, meetings, correspondence, or plans, much less overt acts or conduct, by the NAAA, in furtherance of this imagined "conspiracy."[37]

The law is clear that "it is not enough merely to state that a conspiracy has taken place." 2A Moore's Federal Practice ¶ 8:17 [5] at 8-181 (2d ed. 1980). *Accord, Heart Disease Research Foundation v. General Motors Corp.*, 463 F.2d 98, 100 (2d Cir. 1972) ("a bare bones statement of conspiracy . . . without any supporting facts permits dismissal."); *Connor v. Real Title Corp.*, 165 F.2d 291, 294 (4th Cir. 1947) ("[The conspiracy] allegation is much too vague and general and must fall, since it is unsubstantiated by any facts disclosed in the pleading."); *Black & Yates v. Mahogany Ass'n*, 129 F.2d 227 (3d Cir. 1941), *cert. denied*, 317 U.S. 672 (1942). *See also Ostrer v. Aronwald*, 567 F.2d 551 (2d Cir. 1977); *Powell v. Workmen's Compensation Board*, 327 F.2d 131 (2d Cir. 1964); *Jacobs v. Tenney*, 316 F. Supp. 151 (D. Del. 1970). The Court of Appeals for the Fifth Circuit dismissed for failure to

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[36] See discussion at 2-3, above.

[37] It must be emphasized that, with the exception of the referenced statements of Professor Sharabi and Mr. Baroody that are discussed above, plaintiffs' Complaints and their Memorandum in Opposition contain absolutely no *factual* allegations that involve, or even implicate the NAAA in the March 11 incident.

state a claim, a complaint much like plaintiff's herein, for "conspiracy" to deprive plaintiff of constitutional rights and to subject plaintiff to cruel and unusual punishmemnt. The court explained its ruling, which is directly applicable here, as follows:

> The appellant has failed to allege any facts showing either the existence or the execution of the claimed conspiracy. The pleadings contain only bare allegations that the defendants conspired against the appellant and that as a result of this conspiracy, he was subjected to cruel and unusual punishment. These allegations contain mere bare bones and are totally without any fleshing to show a link between the alleged conspirators. They also fail "to allege any overt acts related to the promotion of the claimed conspiracy" . . . . In short, *the pleadings are merely conclusional and are completely without factual underpinnings. Such pleading is clearly insufficient.* "Although pleadings are given a liberal construction in the federal courts, the Rules contemplate some factual support of the claim. General allegations of this kind unsupported by any factual statements have generally been rejected as insufficient." . . . "[T]he complaint must do more than merely state vague and conclusionary allegations respecting the existence [and operation] of a conspiracy."

Granville v. Hunt, 411 F.2d 9, 11 (5th Cir. 1969) (citations omitted, emphasis added, and bracketed language in original). It is clear that plaintiffs' allegations here of the NAAA's involvement in a conspiracy are totally inadequate. Accordingly, since the allegations against the NAAA are, in actuality, limited to the conspiracy allegation, such inadequacy requires dismissal of plaintiffs' claims against the NAAA.

Point Five: The Chilling Effect of the Pendency of These Cases Requires Plaintiffs to Come Forward with Evidence of NAAA Participation in the Allegedly Tortious Conduct or Suffer Dismissal of Their Claims.

In support of its Motion to Dismiss, the NAAA submitted an Affidavit containing specific denials of the conclusory allegations made by plaintiffs in their complaints. The Baroody Affidavit was based on the personal knowledge of the President of the NAAA at the time of the bus attack at issue. Plaintiffs should not now be permitted to rest merely on their unsupported assertions to survive the NAAA's motion.

It is well established in an analogous context that "a party cannot rest on the allegations contained in his complaint" to oppose successfully a motion that is supported by an affidavit or other evidence. *First National Bank v. Cities Service Co.*, 391 U.S. 253, 289 (1968); *Accord, Bloomgarden v. Coyer*, 479 F.2d 201 (D.C. Cir. 1973); *National Life Insurance Co. v. Silverman*, 454 F.2d 899 (D.C. Cir. 1971); *Richardson v. Rivers*, 335 F.2d 996 (D.C. Cir. 1964). Indeed, Rule 56(e) was specifically amended in 1963 "to overturn a line of cases . . . that had held that a party opposing summary judgment could successfully create a dispute as to a material fact asserted in an affidavit by the moving party simply by relying on a contrary allegation in a well-pleaded complaint." *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 159 n. 20 (1970). *See* Rule 56(e), Fed. R. Civ. P., and Advisory Committee Notes thereto.

Here, plaintiffs were presented with a clear challenge to their unsupported accusations against the NAAA. Mr. Baroody's Affidavit, sworn to and based upon his

personal knowledge, explicitly denied each of plaintiffs' allegations against the NAAA. Faced with such admissible evidentiary material, plaintiffs did nothing but hide behind their original vague and conclusory statements. They produced no factual basis whatsoever for their allegations; they merely misquoted irrelevant statements made years before the incident, made inflammatory, slanderous, and totally groundless accusations based upon speculation, unattributed hearsay and innuendo, and then, incredibly, urged this Court to "accept . . . as true" the allegations contained in their Complaints. The NAAA contends that plaintiffs have not provided this Court with any *factual* allegations against the NAAA that *could* be accepted as true by any reasonable person who has read the papers filed herein. Moreover, plaintiffs' constantly reiterated legal conclusions concerning the NAAA are directly contradicted by a sworn affidavit.

The NAAA recognizes, of course, that the pending motion is not technically one for summary judgment under Rule 56, Fed. R. Civ. P. Nevertheless, considering the serious First Amendment issues raised by plaintiffs, the NAAA submits that—in the face of the Baroody Affidavit—plaintiffs should not be permitted to rely "simply . . . on a contrary allegation in a well-pleaded complaint." *Adickes v. S. H. Kress & Co.*, 398 U.S. at 159 n. 20. The Ninth Circuit has recognized that the mere pendency of actions touching Constitutionally protected rights imposes a chilling effect on Constitutionally protected activities. The Court of Appeals said:

> [W]e . . . hold . . . that in any case . . . where a plaintiff seeks damages or injunctive relief, or both, for conduct which is prima facie protected by the First Amendment, *the danger that the mere pendency of*

the action will chill the exercise of First Amendment rights requires more specific allegations than would otherwise be required.

Franchise Realty Interstate Corp. v. San Francisco Local Joint Executive Board of Culinary Workers, 542 F.2d 1076, 1082-83 (9th Cir. 1976), *cert. denied,* 430 U.S. 940 (1977) (emphasis added). Plaintiffs' Memorandum in Opposition makes clear that the only conduct of which they complain as against the NAAA is "prima facie protected by the First Amendment." Therefore, this Court should not take the boilerplate, nonspecific allegations of the Complaints as given for purposes of the NAAA's pending motion.

CONCLUSION

Plaintiffs should not be permitted to continue their present actions against the NAAA. Those actions should be dismissed for expiration of the limitations period, for lack of jurisdiction, and for lack of specificity. At a minimum, plaintiffs should not be permitted to pursue these actions without first coming forward with at least a scintilla of evidence to link the NAAA with the tortious acts complained of, and with a more specific statement of the acts of the NAAA upon which their actions are purportedly based.

Respectfully submitted,

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Attorneys for Defendant National Association of Arab Americans, Inc.

Dated: May 21, 1981
Washington, D.C.

APPENDIX E

In The
UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

Nos. 81-1870, 81-1871

HANOCH TEL-OREN, *et al.*,

Appellants

v.

LIBYAN ARAB REPUBLIC, *et al.*,

Appellees

Appeal from the United States
District Court for the
District of Columbia

BRIEF FOR THE APPELLANTS,
HANOCH TEL-OREN, et al.

OREN R. LEWIS, JR.
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In The
UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

Nos. 81-1870 and 81-1871

HANOCH TEL-OREN, *et al.*,

Appellants

v.

LIBYAN ARAB REPUBLIC, *et al.*,

Appellees.

Appeal from the United States District Court
for the District of Columbia

CERTIFICATE REQUIRED BY RULE 8(c)
OF THE GENERAL RULES OF THE
UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

The undersigned, counsel of record for appellants Hanoch Tel-Oren, et al., certifies that the following listed parties appeared below:

Hanoch Tel-Oren, Individually and
in his capacity as father,
on behalf of the deceased,
Imry Tel-Oren;

Sharona Tel-Oren;

Adiel Tel-Oren;

Reviva Tel-Oren, a minor, suing by and through her guardian and next friend, Hanoch Tel-Oren;

Nir Tel-Oren;

Joseph Hochman, individually and in his capacity as husband and father, on behalf of the deceased, Rebecca Hochman, Ilan Hochman and Roy Hochman;

Monique Enekave, individually and in her capacity as wife and mother, on behalf of the deceased, Chaviv Enekave, Isaac Enekave and Galit Enekave;

Tal Enekave, a minor, suing by and through her guardian and next friend, Monique Enekave;

Anat Enekave, a minor, suing by and through her guardian and next friend, Monique Enekave;

Adina Enekave, a minor, suing by and through her guardian and next friend, Monique Enekave;

Adina Haloune, individually and in her capacity as wife, on behalf of the deceased, Joseph Haloune;

Tamar Elefand, individually and in her capacity as wife and mother, on behalf of the deceased, Erez Elefand;

Ronit Elefand, a minor, suing by and through her guardian and next friend, Tamar Elefand;

Maya Susinsky Schur, individually and in her capacity as daughter, on behalf of the deceased, Joseph Susinsky and Rena Katia Susinsky;

Eliezer Kroytatro;

Isaac Amir;

Ettel Sacherbrot;

Isaac Mishkal, individually and in his capacity as father, on behalf of the deceased, Yoav Mishkal;

Rachel Mishkal;

Ruth Mishkal, a minor, suing by and through her guardian and next friend, Isaac Mishkal;

Joseph Hadany, individually and in his capacity as father, on behalf of the deceased, Naama Hadany;

Levana Hadany;

Ayelet Hadany, a minor, suing by and through her guardian and next friend, Joseph Hadany;

Simacha Gal-On, individually and in his capacity as father, on behalf of the deceased, Liat Gal-On;

Shoshana Gal-On;

Idan Gal-On, a minor, suing by and through his guardian and next friend, Simacha Gal-On;

Lily Glottman, individually and in her capacity as wife, on behalf of the deceased, Simon Glottman

Anat Glottman, a minor, suing by and through her guardian and next friend, Lily Glottman;

Ilan Glottman, a minor, suing by and through his guardian and next friend, Lily Glottman;

Carmela Rosner, individually and in her capacity as wife, on behalf of the deceased, Tuvia Rosner;

Mordechai Shefer;

Tova Aharonovits, individually and in her capacity as mother, on behalf of the deceased, Revital Aharonovits;

Gideon Haas;

Miriam Haas;

Michelle Haas, a minor, suing by and through her guardian and next friend, Gideon Haas;

Tal Haas, a minor, suing by and through her guardian and next friend, Gideon Haas;

Shlomo Zait, in his capacity as father, on behalf of the deceased, Mordecai Zait;

Ruth Drory, individually and in her capacity as wife, on behalf of the deceased, Amnon Drory;

Michael Drory, a minor, suing by and through his guardian and next friend, Ruth Drory;

Ayelet Drory, a minor, suing by and through her guardian and next friend, Ruth Drory;

Albert Ashkenazi, individually and in his capacity as husband, on behalf of the deceased, Mathilda Ashkenazi;

Yechiel Leibovici, individually and in his capacity as husband, on behalf of the deceased, Malca Leibovici;

Manashe Malca;

Eve Malca;

Abraham Shamir;

Iris Shamir, a minor, suing by and through her guardian and next friend, Abraham Shamir;

Ayelet Shamir, a minor, suing by and through her guardian and next friend, Abraham Shamir;

Esther Menashrov, in her capacity as wife, on behalf of the deceased, Utri Menashrov;

Jacob Besterman, in his capacity as father, on behalf of the deceased, Judah Besterman

Simon Segev, in his capacity as father, on behalf of the deceased, Jacob Segev;

Judith Eshet, in her capacity as wife, on behalf of the deceased, Zvi Eshet;

Isaac Vachs;

Nessa Schwarz;

Joseph Savechnik;

Ella Savechnik;

Abraham Perets;

Shlomo Zait;

Judith Zait;

Gabriel Zait, a minor, suing by and through his guardian and next friend, Shlomo Zait;

Yfaat Zait, a minor, suing by and through her guardian and next friend, Shlomo Zait;

Alexander Jaacobi;

Ella Jaacobi;

Oded Jaacobi, a minor, suing by and through his guardian and next friend, Tirtza Jaacobi;

Uzy Aviasaf;

Bruria Aviasaf;

Michelle Aviasaf, a minor, suing by and through her guardian and next friend, Uzy Aviasaf;

Esther Aviasaf, a minor, suing by and through her guardian and next friend, Uzy Aviasaf;

Bilhah Sela;

Alegra Cohen, in her capacity as mother and mother-in-law, on behalf of the deceased, Ziona Luzia and Abraham Luzia;

Jacob Polak, individually and in his capacity as father, on behalf of the deceased Shlomo Polak.

All of the above-listed persons appeared as plaintiffs.

The following parties appeared as defendants:

National Association of Arab Americans;

Palestine Congress of North America;

Palestine Information Office.

The following parties were named as defendants and served in the District Court, but did not enter a formal appearance:

Libyan Arab Republic;

Palestine Liberation Organization.

Pursuant to an agreement, this appeal is not being pursued against the Palestine Congress of North America, one of the party-defendents in the District Court. An appropriate Motion, consistent with this Agreement, will be filed in this Court within the next few weeks.

These representations are made in order that Judges of this Court, *inter alia*, may evaluate possible disqualifications or recusal.

MICHAEL S. MARCUS
Attorney of Record for
Hanoch-Tel-Oren, et al.

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In The

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 81-1870 and 81-1871

HANOCH TEL-OREN, *et al.*,

Appellants

v.

LIBYAN ARAB REPUBLIC, *et al.*,

Appellees.

Appeal from the United States District Court
for the District of Columbia

BRIEF FOR APPELLANTS, HANOCH TEL-OREN, ET AL.

STATEMENT OF ISSUES PRESENTED BY THIS APPEAL

1. Whether the District Court erred as a matter of law in holding that 28 U.S.C. §1350, which provides *inter alia,* that an alien may bring an action for "a tort only, in violation of the Law of Nations" did not provide a basis for subject matter jurisdiction over the claims of the alien appellants alleging tortious acts in violation of the Law of Nations?

2. Whether the District Court erred as a matter of law in holding that 28 U.S.C. §1331 did not provide a basis for subject matter jurisdiction over the United States citizen-appellants' claims alleging tortious acts in violation of the Law of Nations, where the Law of Nations is recognized as part of federal common law?

3. Whether the District Court erred as a matter of law in holding that the violations of the treaties of the United States alleged by appellants could not provide a basis for subject matter jurisdiction under either 28 U.S.C. §1331 or 28 U.S.C. §1350?

4. Whether the District Court erred as a matter of law in holding that appellants' claims were barred by the one-year statute of limitations set forth in D.C. Code §12-301(4), where two of the torts alleged in Count I and all of the torts alleged in Counts II, III, and V of the Complaints, are not among the torts enumerated in §12-301(4)?

5. Whether the District Court erred as a matter of law in holding that the claims of all appellants were barred by the one-year statute of limitations set forth in D.C. Code §12-301(4), where many of the appellants and appellants' decedents had not attained or would not have attained eighteen years of age prior to one year before the filing of these actions?

STATEMENT REQUIRED BY RULE 8(b) OF THE GENERAL RULES OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The pending case has not previously been before this Court, or any other court, under the same or similar title. Counsel is unaware of any other related cases, either presently pending in this Court or in any other court, or that may be presented to this Court or to any other court in the future.

REFERENCES TO PARTIES AND RULINGS

Rulings

The order presented for review by this Court was entered in the form of a "Memorandum Opinion and Order" by United States District Judge Joyce Hens Green on June 30, 1981. J.A. Vol. II at 110a.

Parties

The Caption does not reflect the names of the following appellants:

Sharona Tel-Oren; Adiel Tel-Oren; Reviva Tel-Oren; Nir Tel-Oren; Joseph Hochman, individually and in his representative capacity; Monique Enekave, individually and in her representative capacity; Tal Enekave; Anat Enekave; Adina Haloune, individually and in her representative capacity; Tamar Elefand, individually and in her representative capacity; Ronit Elefand; Maya Susinsky Schur, individually and in her representative capacity; Eliezer Kroytatro; Isaac Amir; Ettel Sacherbrot; Isaac Mishkal, individually and in his representative capacity; Rachel Mishkal; Ruth Mishkal; Joseph Hadany, individually and in his representative capacity; Levana Hadany; Ayelet Hadany; Simacha Gal-On, individually and in his representative capacity; Shoshana Gal-On; Idan Gal-On; Lily Glottman, individually and in her representative capacity; Anat Glottman; Ilan Glottman; Carmela Rosner, individually and in her representative capacity; Mordechai Shefer; Tova Aharonovits, individually and in her representative capacity; Gideon Haas; Miriam Haas; Michelle Haas; Tal Haas; Schlomo Zait, in his representative capacity; Ruth Drory, individually and in her representative capacity; Michael Drory; Ayelet Drory; Albert Ashkenazi, individually and in his representative capacity; Yechiel Leibovici, in his

representative capacity; Manashe Malca; Eve Malca; Abraham Shamir; Iris Shamir; Ayelet Shamir; Esther Menashrov, in her representative capacity; Jacob Besterman, in his representative capacity; Simon Segev, in his representative capacity; Judith Eshet, in her representative capacity; Isaac Vachs; Nessa Schwarz; Joseph Savechnik; Ella Savechnik; Abraham Perets; Schlomo Zait; Judith Zait; Gabriel Zait; Yfaat Zait; Alexander Jaacobi; Ella Jaacobi; Oded Jaacobi; Uzy Aviasaf; Bruria Aviasaf; Michelle Aviasaf; Esther Aviasaf; Bilhah Sela; Alegra Cohen, in her representative capacity; Joseph Polak, individually and in his representative capacity.

The caption does not reflect the names of the following appellees: National Association of Arab Americans, Palestine Liberation Organization, Palestine Congress of North America, and Palestine Information Office.

STATUTES AND REGULATIONS

28 U.S.C. §1331:

§1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States. As amended Oct. 21, 1976, Pub.L. 94-574, §2 90 Stat. 2721; Dec. 1, 1980, Pub.L. 96-486, §2(a), 94 Stat. 2369.* *Source: 28 U.S.C.A. §1331 (1981 pocket part)

28 U.S.C. §1350:

§1350. Alien's action for tort

The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States. June 25, 1948, c.646, 62 Stat. 934.* *Source: 28 U.S.C.A. §1350 (1976).

D.C. Code §12-301:

§12-301. Limitation of time for bringing actions

Except as otherwise specifically provided by law, actions for the following purposes may not be brought after the expiration of the period specified below from the time the right to maintain the action accrues:

(1) for the recovery of lands, tenements, or hereditaments—15 years;

(2) for the recovery of personal property or damages for its unlawful detention—3 years;

(3) for the recovery of damages for an injury to real or personal property—3 years;

(4) for libel, slander, assault, battery, mayhem, wounding, malicious prosecution, false arrest or false imprisonment—1 year;

(5) for a statutory penalty of forfeiture—1 year;

(6) on an executor's or administrator's bond—5 years; on any other bond or single bill, covenant, or other instrument under seal—12 years;

(7) on a simple contract, express or implied — 3 years;

(8) on which a limitation is not otherwise prescribed —3 years.

This section does not apply to actions for breach of contracts for sale governed by §28:2-725. (Dec. 23, 1963, 77 Stat. 510, Pub.L. 88-241, §1, eff. Jan. 1, 1964; Aug. 30, 1964, 78 Stat. 677, Pub.L. 88-509, §2.)* *Source: D.C. Code Encyclopedia (1973 ed.)

D.C. Code §12-302:

§12-302. Disability of plaintiff

(a) Except as provided by subsection (b) of this section, when a person entitled to maintain an action is, at the time the right of action accrues:

(1) under 18 years of age; or

(2) *non compos mentis;* or

(3) imprisoned

he or his proper representative may bring action within the time limited after the disability is removed. (As amended Mar. 16, 1978, D.C. Law 2-61, §2, 24 DCR 6011.)* *Source: D.C. Code Encyclopedia (1973 ed., Sup. VII, 1980)

(b) When a person entitled to maintain an action for the recovery of lands, tenements or hereditaments, or upon an instrument under seal, is under any of the disabilities specified by subsection (a) of this section at the time the right of action accrues, he or his proper representative, except where otherwise specified herein, may bring the action within five years after the disability is removed, and not thereafter. (Dec. 23, 1963, 77 Stat. 510, Pub.L. 88-241, §eff. Jan. 1, 1964.)* *Source: D.C. Code Encyclopedia (1973 ed.)

STATEMENT OF THE CASE

Plaintiff-appellants initiated the actions which formed the basis of this appeal by filing complaints in the United States District Court for the District of Columbia on March 10, 1981. J. A. Vol. I at 1a. These actions arose out of a savage terrorist attack on March 11, 1978 by elements of the El Fatah branch of the Palestine Liberation Organization upon a civilian bus traveling down the main highway between Haifa and Tel Aviv, Israel. The complaints seek compensatory and punitive damages from the named defendants for tortious acts and conspiracy to

commit tortious acts in violation of international law and treaties and statutes of the United States; such tortious acts culminating in the March 11, 1978 attach. (sic). J.A., Vol. I at 15a-21a.

Plaintiffs in Civil Action No. 81-0563 were the personal representatives of twenty-nine persons who were murdered in the attack. Plaintiffs in Civil Action No. 81-0564 were sixty-five of the persons who were maimed in the attack. The named defendants in the two complaints were: the Libyan Arab Republic (Libya); the Palestine Liberation Organization ("PLO"); the Palestine Information Office ("PIO"); the National Association of Arab Americans ("NAAA"); and the Palestine Congress of North America ("PCNA").[1]

The liability of the appellee-PLO was predicated upon its actions in recruiting, training, directing and provisioning the thirteen terrorists who actually carried out the terrorist operation and in claiming responsibility for the attack. J.A. Vol. I at 18a-19a. Appellee-Libya was named as a party-defendant as a result of its actions in recruiting and training the terrorist instructors who trained the thirteen terrorists who carried out the March 11, 1978 attack, in supplying the weapons and other material used in the operation, in receiving and extending protection to the "mother ship," which brought the terrorists to the Israeli coast and in ratifying the actions of the terrorists. J.A., Vol. I at 19a. The liability of the appellees NAAA and the PIO is based upon their actions in funding and otherwise assisting the PLO so as to enable the PLO to carry out the March 11, 1978 attack and other similar terrorist operations. J.A., Vol. I at 20a-21a.

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[1] The appeal is not being pursued against defendent-appellee PCNA, as a result of an agreement reached between the parties. Appellants will shortly be filing a Motion to Dismiss the Appeal as to appellee PCNA, such motion shall embody the agreement which has been made.

Appellee-NAAA filed an answer, denying the allegations of the complaint (J.A., Vol. I at 76a), and a Motion to Dismiss the complaints for Lack of Subject Matter Jurisdiction and for being Barred by the Statute of Limitations. J.A., Vol. I at 110a. Appellees PCNA and PIO filed motions for summary judgment. Appellees Libya and the PLO did not formally appear in the Court below. However, counsel representing appellee-Libya did attend the first status conference held by the District Court.

The District Court stayed all other proceedings pending a determination of the Motion of appellee-NAAA to Dismiss. Accordingly, appellants were precluded from undertaking any discovery in support of the allegations in the complaints.

On June 30, 1981, the District Court entered its Memorandum, Opinion and Order dismissing both actions for lack of subject matter jurisdiction and for being barred by the statute of limitations. J.A., Vol. II at 110a.

Appellants filed, on July 30, 1981, timely Notices of Appeal to this Court from the Order of the District Court dismissing the actions. These two cases were consolidated for purposes of this appeal by order of this Court, entered on August 27, 1981.

STATEMENT OF FACTS

On March 8, 1978, thirteen heavily armed terrorists, members of the El Fatah faction of the PLO, acting under the direction of the PLO, departed Lebanon by ship for Israel. The mission of these terrorists, as formulated by the PLO and its accomplice, Libya, was to capture and to hold as hostages Israeli civilians for the purpose of extorting the release of certain PLO terrorists in

Israeli jails. Complaint in Civil Action No. 81-0564 at ¶40, J.A., Vol. I at 15a. The plan called for the terrorists to demand that the British and Rumanian ambassadors to Israel and the United Nations representative in Israel surrender themselves as hostages to guarantee the safe conduct of the terrorists to Damascus aboard a United Nations plane.

The terrorists were ordered by the PLO and Libya to kill all the hostages if their mission at any stage did not proceed according to plan, regardless of whether the hostages were women, children and/or old, defenseless men. Both the PLO and Libya were well aware that it was the policy of Israel not to negotiate with terrorists or to agree to such an extorted release of PLO terrorists. The PLO and Libya, in constructing the mission, contemplated and anticipated a mass murder of civilians.

The terrorists landed by boat in Israel on Saturday, March 11, 1978. Upon landing, the terrorists encountered an unarmed photographer named Gail Rubin, who was a citizen of the United States. They immediately killed her without any justification or excuse. Complaint, *Ibid.*, at ¶41, J.A., Vol. I at 16a. The terrorists then made their way to the nearby Haifa-Tel Aviv Highway. This highway is strictly a civilian corridor. The highway had no military traffic, nor was there any legitimate objective adjacent to or near the highway. *Id.* at ¶42, J.A., Vol. I at 16a.

Upon reaching the highway, the terrorists came upon an unarmed civilian bus carrying families of the Egged Bus Company cooperative members returning to Haifa after a company outing. The terrorists fired upon the unarmed bus, killing and wounding children, as well as adults. The bus came to a halt. *Id.* at ¶43, J.A., Vol. I at

16a. At the same time, the terrorists stopped at gunpoint an unarmed civilian taxicab, seized the passengers as hostages, and brought them to the halted bus. *Id.* at ¶44, J.A., Vol. I at 16a. The terrorists fired at the bus passengers who were attempting to give aid to the wounded bus passengers outside the bus and also at those passengers who were trying to escape from the scene. Terrorists forced the passengers of the bus and the taxicab onto the bus. Meanwhile, the terrorists continued to fire at passing unarmed civilian automobiles, killing and wounding still more children and adults. One automobile was stopped, a civilian was taken hostage and was forced onto the bus with the other civilian hostages. *Id.* at ¶45, J.A., Vol. I at 16a.

The bus was then turned around toward Tel Aviv. The terrorists ordered the bus, together with the taxicab, to proceed toward Tel Aviv. Some of the terrorists sat on the roof of the taxicab and shot at the passing civilian cars. This action resulted in death and injury to additional unarmed civilians. *Id.* at ¶46, J.A., Vol. I at 16a.

As the bus and taxicab proceeded toward Tel Aviv, they eventually encountered a second unarmed Egged bus on a regularly scheduled trip from Tel Aviv to Haifa. This second bus was shot at and stopped by the terrorists, who seized the passengers of the second bus as hostages and forced them onto the first bus. The terrorists then continued to proceed toward Tel Aviv. *Id.* at ¶47, J.A., Vol. I at 16a-17a. On board the bus, the terrorists tied all the men to the seats with their hands behind their backs. They beat, humiliated and terrorized their civilian hostages, including the women and children. Several of the terrorists humiliated and tortured a sixteen year old military school student in full view of other hostages on the bus, and then cold-bloodedly murdered him. In the meantime, other terrorists were throwing hand grenades at passing civilian cars. *Id.* at ¶49, J.A., Vol. I at 17a.

Learning of these events, the civilian police attempted to stop the bus by means of a barricade consisting of police vehicles. The terrorists broke through the barricade, hurling hand grenades and firing at the police officers. The police finally managed to stop the bus by shooting at the tires and the engine. *Id.* at ¶51, J.A., Vol. I at 17a.

When the bus came to a halt, the terrorists fired upon the hostages in the bus and at the police officers and civilians outside the bus, killing and severely wounding still more of the hostages. *Id.*

The terrorists forced an adult male, Chaviv Enekave, to go outside the bus and deliver an alleged negotiation message to police officers. Just as Chaviv Enekave left the bus, the terrorists shot him in the back of the head, and killed him. Two of his children, seeing their father murdered before their very eyes, jumped up in anguish. The terrorists then shot and killed the children. At this time, the terrorists again began throwing hand grenades at the police officers and at the civilians outside the bus. *Id.* at ¶52, J.A., Vol. I at 17a.

Once the bus had come to a stop, many of the hostages inside the bus attempted to escape by climbing out of the bus windows. The terrorists shot at these hostages, killing and wounding many of them. The terrorists then began throwing hand grenades at the hostages in the back of the bus, killing and injuring still more of them. The bus started to burn from the hand grenades thrown by the terrorists. The terrorists, however, would not permit the hostages to leave the smoldering bus. *Id.* at ¶53, J.A., Vol. I at 17a-18a.

When the bus began to burn, the terrorists departed the bus, leaving heavy explosives behind in the bus. As

they departed the bus, the terrorists used a young female child as a shield. They then threw hand grenades in the bus, igniting the explosives. The bus exploded and burned, killing the remaining nineteen hostages, men tied to the seats, women and children. *Id.* at ¶ 54, J.A., Vol. I at 18a.

At no time during this entire incident did the terrorists encounter any forces of the Israeli military. *Id.* at ¶55, J.A., Vol. I at 18a.

As the result of the actions of the terrorists, twelve children and twenty-two adults were killed, and fourteen children and seventy-three adults were seriously injured. Many of those killed were burned alive in the smoldering bus. *Id.* at ¶56, J.A., Vol. I at 18a.

The survivors sustained serious and permanent physical injuries, including the loss of limbs, burns to all parts of their bodies, and incapacitating internal injuries. All of the survivors sustained serious and permanent mental, emotional and psychological injuries. Many of the survivors are incapable of pursuing their former professions or performing normal life functions. Lives have been ruined. Families have been destroyed. Almost all of the survivors lost members of their immediate families.

The surviving plaintiffs and the decedents were subjected to inhuman and barbaric treatment by the PLO terrorists. Every standard of human conduct accepted by the civilized world was violated by these terrorists. The victims were subjected to extreme torture, terror, humiliation, were held hostage and in thirty-four instances were brutally murdered. The actions of the terrorists went way beyond what might reasonably be classified as simply assault, battery and false imprisonment.

None of the victims were armed or able to defend themselves, nor were any of them members of the Israeli military or any armed civilian police unit. Most of the victims were women, children, babies and old men. Against this group of unarmed civilians, the PLO terrorists used bazookas, hand grenades, machine guns and other weapons of deadly force.

The terrorists did not even know the identity of their victims. These unfortunate human beings were selected at random by the PLO to be subjected to indiscriminate and barbaric violence. The victims were citizens of the United States, the Netherlands and the State of Israel.

The actions of the terrorists were subsequently applauded and ratified by official pronouncements of the PLO and the government of Libya.

The March 11 attack was not an isolated incident but was part of an overall plan designed by the PLO and Libya to wage a war of terror against unarmed Israeli civilians. In so doing, the PLO and Libya contemplated committing the act of genocide against the population of Israel. The March 11 attack was part of this act of genocide. All of the supporters of the PLO, including the American based defendants herein, knew that these were the objectives of the PLO at the time of and prior to the March attack.

Prior to the March attack, the PLO had engaged in terrorist raids on hospitals, nurseries and school buses; bombed crowded marketplaces and other areas where large numbers of the civilian population congregated; and otherwise had directed barbaric attacks against purely civilian populations in highly populated areas of Israel. The PLO had claimed responsibility for scores of such attacks. In addition, the PLO, together with Libya, on August 11, 1976, carried out an attack against passengers of an El Al plane in the Istanbul International Airport,

killing four passengers and injuring twenty-one; planned and carried out the massacre of Israeli athletes during the Munich Olympics in 1972; on August 5, 1973, engaged in an indiscriminate massacre at Athens Airport of passengers who had departed from a TWA plane which had arrived from Israel; and had conducted the infamous attack on civilian passengers at Lod International Airport in Israel.

One of the primary purposes of the March 11 attack was to sabotage the foreign relations of the United States and its negotions by destroying the positive efforts made in the Camp David accords. It was the intent of the PLO and Libya to conduct such a barbaric attack that would mandate a response by Israel against the Palestine guerrilla bases in southern Lebanon, thus setting off a chain of events which would create a climate making it impossible for any Arab government to negotiate with Israel or for that matter, with the United States. This is in part documented by the statements of the PLO itself and also in part by the increased number of terrorist actions within Israel during 1978.

In mid-February of 1978, the PLO set off a time bomb in a crowded Jerusalem bus, killing two persons and injuring forty-six. In August of that year, there were twenty-three bomb incidents in populated areas of Israel. On September 30, a PLO ship, loaded with explosives, set out for the seaside resort of Eilat, which at that time was filled with tens of thousands of persons celebrating the Jewish New Year. The ship was mounted with 42 Katyuska rockets and had four tons of dynamite aboard. The objective of the mission was to set ablaze with the rockets a huge oil dump on the outskirts of Eilat, set the ship's automatic pilot straight for the crowded beach, and cause the deaths of thousands of vacationers. Such a holo-

caust might actually have taken place but for the interception of the ship by an Israeli gunboat.[2]

The interest of the United States in and its involvement with the March 11 massacre goes even deeper. Libya, prior to this terrorist attack, obtained from within the United States sophisticated terrorist arms and equipment and recruited ex-United States Green Beret and CIA instructors, all for the purpose of assisting the PLO in its terror campaign against the Israeli civilian population. As part of this program, Libya contracted with fugitive Francis Terpil, a citizen of the United States, to organize a network in the United States to illegally obtain explosive devices, arms and terrorist instructors. Thousands of machine guns, missiles and explosive devices were obtained for the PLO by Francis Terpil with the aid of certain American based groups in sympathy with the PLO. In addition, Terpil recruited a team of American clandestine operatives, paramilitary specialists, professional killers and explosive experts trained by the CIA and the United States special forces to conduct terror training for PLO operatives.[3]

Much of the arms and equipment used by the terrorists in the March 11 attack were obtained by the PLO through Libya in this manner. The recruited team of American clandestine operatives trained in Libya the PLO instructors who in turn trained the very terrorists who conducted the attack on the plaintiffs herein.

Prior to the March 11 attack, the PLO was directly involved in raising funds within theUnited States in support of its terrorist campaigns.

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[2] *The Terror Network,* Claire Sterling, Holt, Reinhart and Winston (1981) at p. 280.

[3] See the criminal indictment of Francis E. Terpil and others. J.A., Vol. II at 52a-72a.

Representatives of the PLO attended meetings of American-based groups sympathetic with the objectives and operations of the PLO for the purpose of soliciting an independent base of funds. Indicative of these efforts is a letter written on the stationery of the PLO's United Nations office and signed by Jacob Oubedi, the PLO's top fund raiser, thanking the Palestine committee in the State of Virginia for the money it had raised for the benefit of the PLO's operations.[4] The letter indicates that the money had been turned over to him by the PLO director in New York, Zoher Tarazi. The same Mr. Tarazi has acknowledged in 1976 that Oubedi was in the United States for the purpose of raising funds for the operations of the PLO.[5]

With the knowledge of the aims, objectives and terrorist activities of the PLO, the NAAA funded, assisted in the funding, assisted the obtaining of arms, ratified, encouraged, apologized for and otherwise acted in furtherance of the PLO and Libyan plot to terrorize the civilian populations of Israel. These efforts culminated in the March 11 massacre, which was the worst terrorist attack in the history of Israel. In light of their actions in support of this terror campaign, the plaintiffs allege that the NAAA are legally responsible for the March 11 attack. The Palestine Information Office ("PIO") is the agent and alter ego of the PLO, and is responsible for all the actions of the PLO within and without the United States.[6]

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[4] See the July 5, 1976 letter from Jacob Oubedi, J.A., Vol. II at 72a-73a.

[5] See the column of Jack Anderson, *Washington Post*, dated September 20, 1976, J.A., Vol. II at 74a-75a.

[6] See the Supplemental Registration Statement of the PIO filed with the Department of Justice for the six-month period ending October 24, 1979, J.A., Vol. II at 76a-85a, and the Report of the Attorney-General concerning the Foreign Agents Registration Act for the calendar year 1979. J.A., Vol. II at 86a-89a.

SUMMARY OF THE ARGUMENT

The District Court erred as a matter of law in ruling that 28 U.S.C. §1350 did not provide a basis for subject matter jurisdiction over the tort claims of the alien plaintiff-appellants in the instant case. The holding of the District Court conflicts directly with the most recent decision of the United States Court of Appeals for the Second Circuit construing 28 U.S.C. §1350. The determination by the District Court that the existence of a private cause of action *in international law* is a prerequisite to jurisdiction under 28 U.S.C. §1350, misperceives the nature of the relationship between international law and the municipal law of the United States. Where, as in the instant case, a claim is asserted for torts in violation of international law, that law only defines the standard of conduct. The cause of action is generated from the law of the United States, in the form of federal common law.

The holding by the District Court that the allegations of tortious conduct and conspiracy directed at the NAAA and the PIO were too vague to state a cause of action against those defendant-appellees was erroneous. These allegations were sufficiently specific to withstand a motion to dismiss which was ruled upon prior to the opportunity to conduct any discovery.

The District Court's reasoning that the exercise of jurisdiction over the PLO and Libya pursuant to 28 U.S.C. §1350 would be improper because neither of these parties has consented to the jurisdiction of United States courts ignores important connections between the March 11, 1978 attack and the United States. Acts in furtherance of the March 11, 1978 terrorist attack were committed in the United States and that a primary purpose of the attack was to disrupt the foreign policy of

the United States. By obtaining weapons, equipment, funds and terrorist instructors in the United States, and by attempting to disrupt the foreign policy of the United States, Libya and the PLO impliedly consented to the jurisdiction of United States courts over claims arising out of this conduct.

The District's holding that the identification of a private right of action in international law was a prerequisite to jurisdiction over the claims of appellants who are United States citizens pursuant to 28 U.S.C. §1331, was erroneous as a matter of law. As with 28 U.S.C. §1350, when international law forms the basis of a tort claim under 28 U.S.C. §1331, international law provides only the definition of the wrong. The cause of action arises under the municipal law of the United States.

The ruling by the District Court that the violations of the treaties of the United States alleged by appellants did not provide a basis for subject matter jurisdiction under either 28 U.S.C. §1331 or 28 U.S.C. §1350 constituted reversible error. The treaties cited by appellants in the complaints satisfy the criteria utilized by the courts for determining that a treaty creates enforceable private rights.

The District Court erred as a matter of law in holding that appellants' claims were barred by the statute of limitations. The District Court incorrectly applied the one-year limitation period of the D.C. Code for certain intentional torts specifically enumerated therein to all of appellants' tort claims. Two of the tort claims in Count I of the complaints and all of the tort claims in Counts II, III and IV are not among the torts specifically enumerated in the one-year statute of limitations. Accordingly, these tort claims are governed by the general three-year statute of limitations in the D.C. Code for causes of action not otherwise specifically provided for.

Moreover, irrespective of which statute of limitations is found to be applicable, the claims of the appellants who did not reach eighteen years of age prior to one year before the filing of the complaints cannot be time-barred. D.C. Code §12-302 expressly provides that with respect to persons under eighteen years of age when their cause of action accrues, the running of the statute of limitations is tolled until they attain that age.

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ARGUMENT

I. THE DISTRICT COURT ERRED AS A MATTER OF LAW IN HOLDING THAT THE ALIEN TORT STATUTE, 28 U.S.C. §1350, DID NOT AFFORD A BASIS FOR SUBJECT MATTER JURISDICTION OVER THE TORT CLAIMS OF THE ALIEN APPELLANTS IN THE INSTANT CASE.

A. The District Court Held that 28 U.S.C. §1350 did not Afford a Basis for Subject Matter Jurisdiction Notwithstanding that Torts were Committed in Violation of International Law, that the Appellants were Injured Thereby, that a Purpose of this Tortious Conduct was to Affect United States Foreign Policy and that Acts in Furtherance of these Torts were Committed Within the United States.

28 U.S.C. §1350, otherwise known as the Alien Tort Statute, provides that:

> The district courts shall have original jurisdiction of any civil action by an alien for a tort

> only, committed in violation of the law of nations or a treaty of the United States. 28 U.S.C.A. §1350 (1976).

In its Memorandum Opinion and Order holding that the appellants' claims were not within the subject matter jurisdiction of the federal courts, the District Court did not deny that the acts alleged in the two complaints were torts; nor did the Court deny that these torts constituted violations of the Law of Nations.[7] The Court also did not deny that the appellants were injured as a proximate result of the tortious conduct alleged. The Court accepted, as it was obligated to for purposes of deciding a motion to dismiss,[8] appellants' uncontradicted allegations that a purpose of the tortious conduct was to affect the foreign policy of the United States and that acts in furtherance of the tortious conduct were committed within the United States.

While not disputing any of the premises stated above, the District Court nonetheless held that 28 U.S.C. §1350 did not provide for subject matter jurisdiction over appellants' claims in the federal court. The Court's apparent rationale for this conclusion was twofold.

Analogizing international law to a federal statute, the District Court stated:

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[7] The Court stated that "The question of whether the conduct complained of here violated the law of nations [is] a question the court does not reach . . ." Memorandum Opinion and Order at 4, J.A., Vol. II at 125a.

[8] *Shear* v. *National Rifle Ass'n of America*, 196 U.S. App. D.C. 344, 606 F.2d 1251 (1979) (decision on motion to dismiss for failure to state a claim would assume that allegations in complaint were true.)

> Somewhere in the law of nations . . ., the plaintiff must discern and plead a cause of action that, if proved, would permit the Court to grant relief. The plaintiffs cite no cause of action given to them by the law of nations. . . an action predicated on. . . general norms of international law must have as its basis a specific right to a private claim. Memorandum Opinion and Order at 10, J.A., Vol. II at 131a.

The District Court concluded that the allegations of the complaints did not demonstrate such a specific cause of action in international law. Hence, the Court reasoned, appellants' allegations of tortious conduct in violation of the Law of Nations did not suffice to establish subject matter jurisdiction pursuant to 28 U.S.C. §1350 or 28 U.S.C. §1331.

The Court further held that with respect to appellants' claims against the appellees, NAAA and PIO, the allegations of tortious conduct and conspiracy were "clearly insubstantial." Memorandum Opinion and Order at 9, J.A., Vol. II at 130a.

As will be demonstrated below, both of these grounds for the District Court's decision are premised upon an incorrect interpretation of the relevant principles of law. The Court's interpretation of the scope of subject matter jurisdiction under 28 U.S.C. §1350 is inconsistent with the language of the statute and the historical context in which it was enacted, as well as being in direct conflict with the most recent decision of the United States Court of Appeals for the Second Circuit construing the Alien Tort Statute. *See, Filartiga* v. *Pena-Irala,* 630 F.2d 876 (2d Cir. 1980). The Dismissal by the Court of appellants' allegations of tortious conduct and conspiracy against the NAAA and the PIO fails to recognize that plaintiffs confronted with a secret conspiracy are not obligated to allege

with specificity the particular overt acts constituting the conspiracy prior to the opportunity to obtain requisite specific facts through discovery.

B. The District Court's Conclusion that, in Order to Demonstrate Jurisdiction Under 28 U.S.C. §1350, an Injured Person Must Point to a Specific Provision of International Law which Expressly or Impliedly Creates a Private Cause of Action for the International Law Violation Constitutes an Incorrect Interpretation of 28 U.S.C. §1350.

1. The Interpretation Given to 28 U.S.C. §1350 by the District Court Conflicts Directly with the Decision of the Second Circuit in *Filartiga* v. *Pena-Irala.*

In *Filartiga* v. *Pena-Irala, supra,* the Second Circuit held that deliberate torture perpetrated under color of official authority violates universally accepted norms of the international law of human rights regardless of the nationality of the parties, and, thus, whenever an alleged torturer is found and served with process by an alien within the borders of the United States, an Alien Tort Statute provides for jurisdiction in the federal courts.

The persons seeking to invoke the jurisdiction of the federal courts in *Filartiga* were Paraguayan citizens, the father and sister of another Paraguayan, Joelito Filartiga, who was tortured to death in Paraguay in retaliation for his father's political activities. *Id.* at 878. The defendant, Americo Norberto Pena-Irala, was the former Inspector General of Police in Asuncion, Paraguay and the alleged perpetrator of the death by torture.

The Filartigas brought an action for wrongful death against Pena-Irala, then living in Brooklyn, New York,

in the United States District Court for the Eastern District of New York. The decision of the Second Circuit in *Filartiga* v. *Pena-Irala, supra,* reversed the ruling of the district court dismissing the action for lack of subject matter jurisdiction.

In *Filartiga,* the Second Circuit found that subject matter jurisdiction existed in the federal courts despite the complete absence of any connection between the United States and the facts and circumstances giving rise to the claim. The sole connection between the United States and the case was that the defendant and one of the two plaintiffs were present in the United States at the time the action was commenced. The Court was also not deterred by the fact that the claim involved the relationship between a state and its own citizens.

Unlike the District Court herein, the Second Circuit did not require the Filartigas to demonstrate that a specific provision of international law either expressly or impliedly conferred upon them a private cause of action for the international law violations alleged. Instead, the Court simply stated:

> Having examined the sources from which customary international law is derived—the usage of nations, judicial opinions and the works of jurists—we conclude that official torture is now prohibited by the law of nations. *Filartiga* v. *Pena-Irala, supra,* 630 F.3d at 884.

The Second Circuit then determined that the Alien Tort Statute did not exceed the scope of federal jurisdiction as conferred by Article III of the Constitution because the Law of Nations has always been part of the law of the United States. 630 F.2d at 885-887. Having estab-

lished these two fundamental premises, the Court concluded that:

> . . . there can be little doubt that this action is properly brought in federal court. This is undeniably an action by an alien, for a tort only, committed in violation of the law of nations. 630 F.2d at 887.

Despite the numerous important parallels between *Filartiga* and the present case,[9] the District Court only referred to *Filartiga* once in the course of its opinion. As in *Filartiga,* the instant case involves aliens seeking to recover for tortious conduct in violation of universally-recognized norms of international law. The District Court, while implicitly rejecting *Filartiga,* never explained why the reasoning employed by the Second Circuit was not deemed persuasive.

The instant case provides an even clearer justification for the exercise of federal jurisdiction pursuant to 28 U.S.C. §1350 than did *Filartiga.* Unlike *Filartiga,* the instant case does not involve the relationship of a state and its own citizens. Extremely important connections existed between the United States and the facts giving rise to appellants' claims. As explained in the Statement of Facts, a primary purpose of the March 11, 1978 terrorist attack was to interfere with the foreign policy of the United States by disrupting the "Camp David" peace process. The Camp David peace process was a cornerstone of United States Middle East policy.

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[9] There are also several important differences between the instant case and *Filartiga,* but these differences, as explained *infra,* make the present case even more appropriate for the exercise of jurisdiction pursuant to 28 U.S.C.§1350 than was *Filartiga.*

Moreover, many of the tortious acts committed in furtherance of the terrorist attacks, specifically the obtaining of needed funds, weapons equipment and terrorist instructors, took place within the territory of the United States. These important connections between the United States and the tortious acts giving rise to appellants' claims provide a greater justification for the exercise of federal court jurisdiction than would exist if all of the relevant acts took place outside of the United States and were otherwise unrelated to the United States.

2. A Cause of Action Arises from the Federal Common Law for Torts Committed in Violation of the Law of Nations.

The interpretation given to 28 U.S.C. §1350 by the District Court fundamentally misconceives the relationship between international law and the law of the United States. When, as in the instant case, a person seeks redress in federal court for a tort in violation of universally-recognized rights protected by the Law of Nations, the cause of action, as such, does not arise under international law. Instead, as the following discussion will demonstrate, international law supplies the normative principle or right, the violation of which creates a cause of action arising under the municipal law of the United States.

That the Law of Nations constitutes part of the law of the United States, as federal common law, has been established beyond dispute. *Banco Nacional de Cuba* v. *Sabbatino,* 376 U.S. 398 (1964); *The Paquete Habana,* 175 U.S. 677 (1900); *United States* v. *Smith,* 18 U.S. (5 Wheat.) 153 (1820). This recognition of the integral role of international law in the domestic law of the United States was consistent with the principle, generally accepted in both England and the American colonies in the

eighteenth century, that international law was part of the common law. *See, Filartiga* v. *Pena-Irala, supra.,* 630 F.2d at 886.

It is also settled that claims based on a federal common law "arise under" the law of the United States as that phrase is used in Article III of the Constitution. *Illinois* v. *City of Milwaukee, Wisconsin,* 406 U.S. 91 (1972); *Filartiga* v. *Pena-Irala, supra.*

The relevant principles of international law applicable to a particular case are to be ascertained by consulting international agreements, international custom, general principles of law recognized by civilized nations, judicial decisions recognizing and enforcing that law and the teachings of learned commentators. *The Paquete Habana, supra.; United States* v. *Smith, supra.; Filartiga* v. *Pena-Irala, supra.* In order to become judicially enforceable, a principle of international law must command the "general assent of civilized nations." *The Paquete Habana, supra,* 177 U.S. at 694; *Filartiga* v. *Pena-Irala, supra.*

On the other hand, no requirement exists that a principle of international law, generally recognized by civilized nations, contain an express or implied private right of action for its violation. Such a cause of action arises automatically under the federal common law once it has been demonstrated that a person has been injured by the violation of a generally recognized principle of international law. *See, Filartiga* v. *Pena-Irala, supra.*

Indeed, acceptance of the District Court's requirement that the existence of specific language expressly or impliedly conferring a private right of action be demonstrated would render the "Law of Nations" element of 28 U.S.C. §1350 a nullity. A provision in international law expressly or impliedly creating a private right of

action could exist only in a specific treaty or other international instrument. Accepting, *arguendo,* the District Court's position that customary international law must be ignored, the only way such a provision could be enforced in United States courts would be if the particular treaty or other international instrument was ratified as a treaty of the United States. The inclusion of the words "the Law of Nations" in 28 U.S.C. §1350 would thereby be rendered utterly superfluous.

The District Court's requirement of a specific private right of action, which necessitates an isolated analysis of the language of specific international documents, is also inconsistent with the manner in which customary international law evolves. As one commentary explains:

> . . . international instruments [are] not . . . necessarily binding by themselves, but . . . [are] incremental building blocks of an order which can be seen with increasing clarity as the number and authoritativeness of supporting instruments mount. To determine whether an obligatory norm has been created, one is advised to look at the number and intended legal status of instruments addressing the norm, the language used in the documents, including the nature of proposed sanctions, and the specificity with which the event or conduct is defined; the connection of the item's content with previous prescriptions, and whether it appears to have the overwhelming support of states. Blum & Steinhardt, *Federal Jurisdiction over International Human Rights Claims: The Alien Tort Claims Act After Filartiga v. Pena-Irala,* 22 Harv. Int. L.J. 53, 73-74 (1981).

As Blum and Steinhardt indicate, it is the multiplicity and specificity of the international documents de-

fining the norm of behavior, together with the extent to which the norm has received the overwhelming acceptance of civilized nations, which determines whether the norm becomes a principle of international law enforceable in a domestic court.

The District Court's insistence that a cause of action be somewhere located in international law as a prerequisite to a federal jurisdiction also ignores a fundamental distinction between the meaning of the term "arising under the laws of the United States" as used in the general federal question statute, and the term "in violation of international law" as used in the Alien Tort Statute. Had the first Congress, in enacting the Alien Tort Statute, provided that the district courts would have jurisdiction over tort actions by aliens *"arising under* the Law of Nations," the District Court's construction of the statute might be correct. The use of different formulations in 28 U.S.C. §1350 and 28 U.S.C. §1331 was, however, purposeful. The language "arising under" pinpoints the source of law from which the cause of action generates. The language "in violation of" denotes the standard of conduct to be applied to an otherwise existing cause of action. The first Congress was well aware that the Law of Nations was part of the law of the United States, as federal common law. In enacting 28 U.S.C. §1350, Congress was doing no more than extending to aliens a right which was possessed by citizens pursuant to 28 U.S.C. §1331. That right was the right to bring an action for a tort committed in violation of a right protected by international civil law.

The reason Congress decided to extend this right to aliens was related to the eighteenth century legal doctrine of *hostis humani generis.* The essence of this doctrine is "that certain acts specified as universally reprehensible would make the perpetrator liable to capture and trial

wherever he went." Blum and Steinhardt, *supra.* at 60. This doctrine has been applied regardless of the nationality of the perpetrator or the victim, or the locus of the crime. The United States Supreme Court has applied the doctrine of *hostis humani generis* to sustain the criminal prosecution of pirates for crimes committed on the high seas. *See, e.g., United States* v. *Klintock,* 18 U.S. (5 Wheat.) 144 (1820); *United States* v. *Pirates,* 18 U.S. (5 Wheat.) 184 (1820).

The Alien Tort Statute can best be understood as analogous, for purposes of civil liability, to the doctrine of *hostis humani generis.* The Second Circuit, in *Filartiga,* interpreted 28 U.S.C. §1350 in precisely this way, stating: "Indeed, *for purposes of civil liability,* the torturer has become—like the pirate and slave trader before him—*hostis humanis generis,* an enemy of all mankind." 630 F.2d at 890. (emphasis supplied)

In sum, the District Court's ruling that a private cause of action must be ascertained *in international law* as a predicate to jurisdiction under 28 U.S.C. §1350 constitutes a clear misinterpretation of that statute. For purposes of jurisdiction under 28 U.S.C. §1350, international law only defines the wrong—for which the municipal law of the United States supplies a remedy.[10]

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[10] An apt illustration of this right/remedy distinction can be found in the decision of *Fernandez* v. *Wilkinson,* 505 F.Supp. 787 (D. Kan. 1980). In *Fernandez,* the District Court held that the alien petitioner could not claim any rights under the statutes or Constitution of the United States as a protection against indeterminate detention. The Court held, however, that this indeterminate detention did violate rights protected by customary international law as exemplified by the Universal Declaration of Human Rights and the American Convention of Human Rights. 505 F.Supp. at 798-799. The remedy for this wrongful detention was found in the municipal law of the United States—the writ of habeas corpus.

3. The Tortious Conduct of the PLO Terrorists and Those Who Acted in Concert with them Violated the Law of Nations.

The PLO terrorists committed the torts or terror, torture, hostage-taking and genocide against the plaintiffs. Each of these torts is in violation of the laws of nations.

Acts of terror, such as committed by the PLO members against the plaintiffs, are directly prohibited by many international agreements, including the United Nations Charter, J.A., Vol. I at 202a-222a, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, J.A., Vol. I at 255a-259a, the European Convention of the Protection of Human Rights and Fundamental Freedoms, the European Convention on the Suppression of Terrorism, the Geneva Convention for the Protection of Civilian Persons in Time of War (August 12, 1949), J.A., Vol. I at 165a-200a, the Geneva Convention for the Prevention and Punishment of Terrorism (November 16, 1937), the Declaration of the Rights of the Child, General Assembly Resolution 1386 (XIV) (1959), J.A., Vol. I at 260a-262a, the Principles of the Law of Nations Against Committing Terrorism on Civilian Populations Pronounced in General Assembly Resolution 2444 (XXIII) (1968), the Convention to Prevent and Punish Acts of Terrorism (February 2, 1971) of the Organization of American States and other acts, declarations and resolutions of international bodies.[11]

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[11] The fact that some of these documents may not have been ratified or may not constitute treaties is totally irrelevant to the question as to what is the law of nations with regard to terror, torture, hostage-taking and/or genocide. See *Filartiga v. Pena-Irala*, supra.

Protocol I to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (adopted by the conference on June 8, 1977) is an extremely authoritative source to determine the Law of Nations as relating to terrorism in March, 1978. Article 51 of Protocol 1, entitled "Protection of Civilian Populations," provides as follows:

> (1) The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules which are additional to other applicable rules of international law shall be observed in all circumstances.
>
> (2) The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence, the primary purpose of which is to spread terror among the civilian populations are prohibited.

The essence of Article 51 of Protocol 1 is to prohibit deliberate attacks on civilian populations, and acts or threats of violence of which the main aim is to terrorize the population by indiscriminate attacks. See *New Code for the Protection of Civilian Populations and Property During Armed Conflict,* Ionel Closca, International Review of the Red Cross, November-December, 1980. There simply can be no question that the PLO terrorists did exactly what is prohibited by the Law of Nations as documented by Article 51 of Protocol 1 to the Geneva Conventions of 12 August 1949.

Article 5 of the Universal Declaration of Human Rights provides: "No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment."

Article 3 of the Geneva Convention of 12 August 1949 Relating to the Protection of War Victims, states that the following acts "are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons [persons taking no active part in hostilities]: (a) violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular, humiliating and degrading treatment."

The Convention on the Prevention and Punishment of the Crime of Genocide declares that genocide, whether committed in time of peace or in time of war, is a crime under international law. It defines genocide to mean, among other actions, the deliberate inflicting on the group of conditions of life calculated to bring about its physical destruction in whole or in part. This is of course, exactly what Libya and the PLO are attempting to do to the civilian population of Israel through terrorist actions such as the March 11 massacre.

The United Nations 1975 Declaration on the Protection of All Persons From Being Subject to Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment is further evidence that the Law of Nations prohibits the cruel and barbaric actions of the PLO terrorists. Article II of that Declaration provides:

> Any act of torture or other cruel, inhuman or degrading treatment or punishment is an offense to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights.

The United States Court of Appeals for the Second Circuit in *Filartiga* v. *Pena-Irala,* supra, directly held that torture was in violation of the Law of Nations. The authorities cited in the Second Circuit decision, coupled with the reasoning in that opinion, necessitate a conclusion that torture, terror, hostage-taking, and acts of genocide are likewise in violation of and actionable under the Law of Nations. The decision of the Second Circuit is consistent with and supported by several decisions of the International Court of Justice, which confirm the existence of the customary international law of human rights.[12]

The number and specificity of international documents prohibiting the acts committed by the PLO terrorists, coupled with the general condemnation of terrorism by all civilized nations demonstrates (sic) a universal consensus that the torts of terror, torture, taking of hostages and the act of genocide which they committed are in violation of international law.

4. The Allegations of Tortious Conduct and Conspiracy by the NAAA and PIO were Sufficiently Specific to Withstand a Motion to Dismiss Ruled Upon Before any Discovery was Permitted to be Conducted.

The District Court also erred as a matter of law in holding that the allegations of tortious conduct and conspiracy by the NAAA and the PIO were insufficiently specific to state a cause of action. It is alleged that the NAAA, with knowledge of the aims, objectives and terrorist activities of the PLO, funded, assisted in the fund-

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[12] *Nuclear tests (Australia v. France),* Judgment of December 20, 1974 [1974] ICJ 253; *Advisory Opinion on Legal Consequences for States of the Continued Presence of South Africa in Namibia (Southwest Africa) notwithstanding Security Counsel Resolution 276* (1970) [1971] ICJ 16.

ing, assisted the obtaining of arms, ratified, encouraged, apologized for and otherwise acted in furtherance of the March 11, 1978 terrorist attack. See Complaint in Civil Action No. 81-0564 at ¶61, J.A., Vol. I at 20a. The Palestine Information Office is alleged to be the alter ego, agent and instrumentality of the PLO. See, *Id.* at ¶60. These allegations, if proven, will provide a more than adequate basis for imposing civil tort liability upon the NAAA and the PIO.

As indicated *infra* in the Statement of the Case, the District Court stayed all proceedings, *including discovery*, pending its determination of the NAAA's Motion to Dismiss. Appellants were thereby precluded from conducting any discovery which could have enabled them to state their allegations with greater specificity. It is recognized that "the very nature of a conspiracy is such that details of the acts that constitute it usually are unavailable or unknown to plaintiff until resort is had to discovery." *Jack Loecks Enterprises, Inc.* v. *W. S. Butterfield Theatres,* 13 F.R.D. 5, 8 (E.D. Mich. 1952); *See also,* Wright & Miller, Federal Practice and Procedure: Civil §1233 at 181 (1969). Accordingly, it was error for the District Court to hold that the allegations directed to the NAAA and the PIO were impermissibly lacking in specificity prior to any discovery.

5. The PLO and Libya, by Obtaining Weapons, Funds and Terrorist Instructors in the United States and by Attempting to Disrupt United States Foreign Policy, Impliedly Consented to the Jurisdiction of United States Courts to Adjudicate Claims Arising out of this Conduct.

In support of its ruling that the demonstration of a private right of action in international law is a prerequisite

to jurisdiction under 28 U.S.C. §1350, the District Court states that:

> Otherwise, federal courts would clutch power over cases, under the guise of the law of nations, undoubtedly casting effect upon international relations when no country, friend or foe, has consented to an American court opening its doors to one alleging violations of international legal principles. Memorandum Opinion and Order at 11, J.A., Vol. II at 132a.

This rationale ignores the facts that the actions of the PLO and Libya directly involved and have directly impacted upon the United States. As discussed in the Statement of Facts, the Libyans and the PLO engaged actively in fund-raising among sympathetic groups in the United States in support of this and other terrorist attacks. Libya and the PLO also recruited terrorist instructors and obtained weapons and other military equipment in the United States. In addition, one of the primary purposes of the March 11 terrorist attack was to disrupt United States foreign policy by crippling the Camp David peace process.

In view of these extensive connections between the March 11 terrorist attack and the United States, Libya and the PLO have impliedly consented to the jurisdiction of United States courts over claims arising out of their tortious conduct.

Other important considerations of public policy support the exercise of jurisdiction over the PLO and Libya pursuant to 28 U.S.C. §1350 under the circumstances of this case. Recognition that redress is available in United States courts against those who, using the United States as a base of operation, violate core human rights protected by international law will assist in securing these rights to

all people. The Second Circuit eloquently stated the public policy justification for giving 28 U.S.C. §1350 this interpretation at the close of its opinion in *Filartiga*:

> In the twentieth century the international community has come to recognize the common danger posed by the flagrant disregard of basic human rights and particularly the right to be free of torture. Spurred first by the Great War, and then the Second, civilzed nations have banded together to prescribe acceptable norms of international behavior. From the ashes of the Second World War arose the United Nations Organization, amid hopes that an era of peace and cooperation had at last begun. Though many of these aspirations have remained elusive goals, that circumstance cannot diminish the true progress that has been made. In the modern age, humanitarian and practical considerations have combined to lead the nations of the world to recognize that respect for fundamental human rights is in their individual and collective interest. Among the rights universally proclaimed by all nations, as we have noted, is the right to be free of physical torture. Indeed, for purposes of civil liability, the torturer has become—like the pirate and slave trader before him—*hostis humani generis*, an enemy of all mankind. Our holding today, giving effect to a jurisdictional provision enacted by our First Congress, is a small but important step in the fulfillment of the ageless dream to free all people from brutal violence. 630 F.2d at 890.

II. THE DISTRICT COURT ERRED AS A MATTER OF LAW IN HOLDING THAT 28 U.S.C. §1331 DID NOT PROVIDE A BASIS FOR SUBJECT MATTER JURISDICTION OVER THE CLAIMS OF

THE APPELLANTS WHO ARE UNITED STATES CITIZENS.

For the same reasons as stated above with respect to 28 U.S.C. §1350, the District Court's holding that the existence of a private right of action must be demonstrated in international law as a prerequisite to 28 U.S.C. §1331 jurisdiction over claims of torts in violation of international law was an erroneous interpretation of that statute. As previously stated, international law is part of the law of the United States, as federal common law. Both the United States Supreme Court and this Court have held that claims based upon federal common law arise under the laws of the United States as that phrase is used in 28 U.S.C. §1331. *Illinois* v. *City of Milwaukee, Wisconsin,* 406 U.S. 91 (1972); *Trans-Bay Engineers and Builders, Inc.* v. *Hills,* 179 U.S. App. 184, 551 F.2d 370 (1976). As with 28 U.S.C. §1350, when international law forms the basis of a tort claim under U.S.C. §1331, international law provides only the definition of the wrong. The cause of action arises under the municipal law of the United States.

III. THE DISTRICT COURT ERRED AS A MATTER OF LAW IN HOLDING THAT THE VIOLATIONS OF THE TREATIES OF THE UNITED STATES ALLEGED BY APPELLANTS COULD NOT PROVIDE A BASIS FOR SUBJECT MATTER JURISDICTION UNDER EITHER 28 U.S.C. §1331 OR 28 U.S.C. §1350.

All of the appellants have causes of action arising under the enumerated treaties. These treaties, when considered in the context of their purpose, are the kinds of treaties which give rise to private causes of action under

28 U.S.C. §1331 and 28 U.S.C. §1350. Moreover, the criteria universally recognized by the courts for finding a treaty to give rise to a private cause of action are satisfied by the treaties relied upon by appellants in the complaints.

The interpretation and administration of these treaties presents a pivotal, substantive issue, the determination of which will have a direct impact on the appellants' success or failure. The claims of appellants involve construction of the treaties of the United States, which constitute laws of the United States. The sections of the treaties relied on are primarily of a judicial nature, can be interpreted by judicial tribunal, and confer rights upon individual citizens. The apparatus for effectuating the rights conferred by these treaties already exist in the judicial system of the United States and no new mechanisms need be enacted in order for the courts to enforce those rights.

The ratification of a treaty by the United States makes it the law of the United States. No legislation is necessary to give it the effect of law. This principle was confirmed by the United States Supreme Court in *Asakura* v. *City of Seattle,* 265 U.S. 332 (1924), in which the Court states at p. 341: "It [a treaty] stands on the same footing of supremacy as do the provisions of the Constitution and laws of the United States. It operates of itself without the aid of any legislation, state or national; and it will be applied and given authoritative effect by the courts." The same holding was reached by the United States Supreme Court later, in *Bacardi Corporation* v. *Domenech,* 311 U.S. 150 (1940). See also, *United States* v. *A. L. Burbank and Company, Ltd.,* 525 F.2d 9 (2d Cir. 1975).

The test as to when treaties which are part of the law of the United States confer private rights on citizens of

the United States was structured by the United States Supreme Court in *The Head Money Cases,* 112 U.S. 580 (1884). The ruling in this case has been the fundamental basis utilized by federal courts to consider the question of private rights created by treaties. The Court held as follows:

> . . . a treaty may also contain provisions which confer certain rights upon the citizens or subjects of one of the nations residing in the territorial limits of the other, which partake of the nature of municipal law, and which are capable of enforcement as between private parties in the courts of the country . . . The Constitution of the United States places such provisions as these in the same category as other laws of Congress by its declaration that 'this constitution and the laws made in pursuance thereof, and all treaties made or which shall be made under authority of the United States, shall be the supreme law of the land.' A treaty, then, is the law of the land as an act of Congress is, whenever its provisions proscribe a rule by which the rights of the private citizen or subject may be determined. And when such rights are of a nature to be enforced in a court of justice, the court resorts to the treaty for the rule of decision for the case before it as it would to a statute.

An examination of the treaties cited in the complaints demonstrates (a) that they confer certain rights on individuals; (b) that these rights partake of the nature of municipal law; and (c) they are capable of being enforced as between private parties in the courts of this country without the enactment of any new legislation. Consequently, these treaties, pursuant to the ruling of the Supreme Court in *The Head Money Cases,* give rise to pri-

vate causes of action and those causes of action are to be enforced in the federal courts.

An instructive case concerning the existence of private rights pursuant to the kind of treaties enumerated by the appellants is *The People of Saipan* v. *United States Department of Interior,* 502 F.2d 90 (9th Cir. 1974). The plaintiffs in the *Saipan* case claimed they had a private right of action based on the Trusteeship Agreement pursuant to which the United States was authorized to administer the territory of Micronesia. The court found that the plaintiffs indeed had a private right of action pursuant to that Agreement and more specifically, pursuant to the section of the Agreement which provided that the United States was required to "promote the economic advancement and self-sufficiency of the inhabitants, and to this end . . . regulate the use of natural resources" and to "protect the inhabitants against the loss of their lands and resources . . ."On the basis of this language and this language alone, and without any enabling legislation, the Ninth Circuit reached this conclusion.

The Court in the Saipan case held that:

> The extent to which an international agreement establishes affirmative and judicially enforceable obligations without implementing legislation, must be determined in each case by reference to many contextual factors: the purposes of the treaty and the objectives of its creators, the existence of domestic procedures and institutions appropriate for direct implementation, the availability and feasibility of alternative enforcement methods, and the immediate and long-range social consequences of self or non self-execution. 502 F.2d at 97.

Relying on the test just quoted, the Court in *Saipan* held that the preponderance of features in the Trusteeship

Agreement suggest the intention to establish direct affirmative and judicially enforceable rights.

> The issue involves the local economy and environment, not security; the concern with natural resources and the concern with political development are explicit in the agreement and are general international concerns as well; the enforcement of these rights requires little legal or administrative innovation in the domestic forum; and the alternative forum, the Security Council, would present to the plaintiffs obstacles so great as to make the rights virtually unenforceable. 502 F.2d at p. 97.

Utilizing the test formulated by the Ninth Circuit, it would seem abundantly clear that the treaties relied upon by the appellants create private rights of action against the appellees in this case. The conferring of basic human rights, the freedom from torture, terror, being taken as a hostage and genocide, would seem to be even more appropriate for judicial enforcement than issues involving the local economy and the environment.

The cases relied upon by the District Court in its Memorandum do not necessitate a contrary conclusion. In *Diggs* v. *Richardson,* 180 U.S. App. D.C. 376, 555 F.2d 848 (1976), this Court was called upon to determine whether a United Nations Security Council resolution calling upon member states not to have any dealings with South Africa, created private rights of action. Firstly, it should be noted that the Court did not throw out the cause of action because it relied on a United Nations Security Council resolution, but instead, went ahead to examine the nature of that resolution to determine the possible rights of the plaintiffs. Therefore, this Court must have concluded that private rights of action can be premised upon United Nations Security Council resolutions.

Secondly, the nature of the resolution under consideration in ***Diggs*** was clearly geared to foreign relations of countries and not to judicially enforceable rights. Judge Leventhal in the opinion so found. Judge Leventhal, in reaching his opinion, adopted with approval the ruling of the Supreme Court in ***The Head Money Cases*** discussed above. The Court held at p. 851:

> Applying this kind of analysis [***The Head Money Cases*** analysis] to the particular Security Council Resolution on which plaintiffs rely, we find that the provisions here in issue were not addressed to the judicial branch of our government. They do not by their terms confer rights on individual citizens; they call upon governments to take certain actions.

Applying the test developed by Judge Leventhal and employing ***The Head Money Cases*** analysis, the contrary conclusion would be reached with regard to the treaties relied on by the appellants. Consequently, these treaties create a private right of action on behalf of the appellants.

The District Court, in its Memorandum, has relied upon ***Huynh Thi Anh*** v. ***Levi,*** 586 F.2d 625 (6th Cir. 1978) to support the proposition that the Geneva Convention Relative to Protection of Civilian Persons in Time of War, does not give rise to a cause of action with regard to the tortious conduct alleged in the complaints. A reading of that case indicates that it does not stand for that proposition at all. ***Levi*** was a habeas corpus action to obtain custody instituted by the grandmother and uncle of Vietnamese children brought to this country and placed with foster parents. What the Sixth Circuit said was that Articles 24 and 49 of that Convention relating to education of children separated from parents by war did not give rise to a private cause of action because *that language* was vague, very general, and "does not answer the

custody question presented by this case." In no way did the Sixth Circuit hold that the Convention could not under appropriate circumstances give rise to a private cause of action.

An examination of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, indicates that its essential purpose is directed to protecting the rights of persons who are civilians. It confers individual rights on such persons. It describes in detail that these individuals are to be free from acts of torture, terror, hostage-taking and genocide. The rights given to individuals are clear, enforceable and unmistakeable. They are enforceable in United States courts without the enactment of any new legislation and without the Congress providing any additional funds.

The Second Circuit in the *Filartiga* case stated that the Universal Declaration of Human Rights no "longer fits into the dichotomy of 'binding treaty' against 'non-binding pronouncement' but is rather an authoritative statement of the international community." 630 F.2d at 883. As such, in applying the rationale of Judge Leventhal in the *Diggs* case, the Universal Declaration of Human Rights should be construed as creating private rights enforceable by this Court. It unquestionably confers individual rights and defines fundamental freedoms capable of being enforced by a judicial tribunal. Those rights are not inconsistent with, and in fact, are parallel to, our own Bill of Rights. To permit a private right of action under the Universal Declaration of Human Rights would do nothing more than permit the principles of our Bill of Rights to be utilized in cases involving aliens and actions outside of the United States. Such an application of fundamental human rights law is exactly what is mandated by the United States incorporating international law into its

federal common law, as is evidenced by the language of 28 U.S.C. §1350. [13]

Where a complaint is drawn so as to claim a right to recovery under the laws or treaties of the United States, the federal court has subject matter jurisdiction unless the federal question alleged is immaterial or wholly insubstantial and frivolous. *Hartigh* v. *Latin,* 158 U.S. App. D.C. 289, 485 F.2d 1068 (1973) *cert. denied* sub. nom. *District of Columbia* v. *Marsh,* 415 U.S. 948 (1974). If there is any foundation or possibility to the claim of federal question jurisdiction, then the Court is to deny a motion to dismiss on the basis of lack of federal question jurisdiction. *Payne* v. *Government of the District of Columbia,* 182 U.S. App. D.C. 188, 559 F.2d 809 (1977). These holdings of this Court are consistent with the ruling of the Supreme Court in *Duke Power Company* v. *Carolina Environmental Study Group, Inc., et al.,* 438 U.S. 59 (1973), when the court held:

> For purposes of determining whether jurisdiction exists under §1331(a) to resolve appellee's claims, it is not necessary to decide whether appellee's alleged cause of action against the NRC based directly on the Constitution is in fact a cause of action "on which [appellee's] can actually recover." *Bell* v. *Hood,* 327 U.S. 678, 682 (1946). Instead the test is whether 'the cause of action alleged is so *patently without merit* as

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[13] The United States District Court for the Northern District of Illinois, in *The United States* v. *Steinberg,* 478 F. Supp. 29 (1979), held, "the United Nations Charter, a treaty ratified by the United States, is a part of the supreme law of the land. *Balfour, Gutherie & Company* v. *United States,* 90 F.Supp. 831 (N.D. Cal. 1950)." As such, the Charter also would give rise to a private cause of action on behalf of the plaintiffs in this case since it too, confers individual rights capable of judicial enforcement.

to justify . . . the court's dismissal for want of jurisdiction." 438 U.S. at 70.

Certainly, it cannot be said that the assertion of federal subject matter jurisdiction based on the treaties enumerated by the appellants is so patently without merit, is so immaterial and so insubstantial as to warrant dismissal.

IV. THE DISTRICT COURT ERRED AS A MATTER OF LAW IN HOLDING THAT APPELLANTS' CLAIMS WERE BARRED BY THE STATUTE OF LIMITATIONS.

A. Appellants' Causes of Action in Count I of the Complaints for Intentional Infliction of Emotional Distress and Intentional Infliction of Cruel, Inhuman and Degrading Treatment are not Barred by the One-Year Limitation Period Provided for in D.C. Code §12-301(4) Because they are not among the Torts Specifically Enumerated Therein.

Section 12-301 of the D.C. Code provides a one-year statute of limitations for claims for "libel, slander, assault, battery, mayhem, wounding, malicious prosecution and false imprisonment." D.C. Code §12-301(4). Two of the claims set forth in Count I of the complaint, specifically the claims for intentional infliction of emotional distress and intentional infliction of cruel, inhuman and degrading treatment, are not among those enumerated in §12-301(4). The District Court held that these two tort claims are "dependents of the same personal interests infringed by the intentional torts that would be subject in the District of Columbia to the one year limitation period." Memorandum Opinion and Order at 12-13, J.A., Vol. II at 133a-134a. This characterization of these two Count I claims is not correct.

The intentional infliction of emotional distress is recognized as an actionable tort, distinct and independent from the intentional torts of assault and battery. See Prosser, *Law of Torts,* (4th Ed. 1971) §12 at 56-59; Second Restatement of Torts, §46, Comment K. The surviving appellants and the decedents in these cases have suffered severe and permanent emotional trauma as a result of *inter alia* observing the killing and maiming of their loved ones and others during the course of this terrorist attack. The emotional distress engendered by experiencing these events is a compensable harm, wholly distinct from any personal injury or apprehension of personal injury which they themselves suffered. As a result, this cause of action is not governed by the one-year statute of limitations in D.C. Code §12-301(4).

Similarly, the intentional infliction of cruel, inhuman and degrading treatment is a tort distinct from those specifically enumerated in D.C. Code §12-301(4). This tort, while encompassing some of the same elements as battery and false imprisonment, is distinguished by the necessity of showing an intent to inflict treatment upon a person of such extreme barbarity as to be qualitatively different from mere unconsented to touching or unconsented to curtailment of freedom of movement. As a result, this cause of action is also not governed by the one-year statute of limitations in D.C. Code §12-301(4).

After listing in subsections, seven specific actions or sets of actions for which specific limitations periods are prescribed, the D.C. Code states: ". . . (8) for which a limitation is not otherwise *specially prescribed*—three years." D.C. Code §12-301(8). [Emphasis added] The inclusion of this general provision evidences a clear legislative intent that the seven preceding sections and the other limitations provisions scattered throughout the D.C.

Code were meant to apply only to the specific actions enumerated therein and to no others. See also *Gibson* v. *Gibson,* 240 Ark. 827, 402 S.W. .2d 647 (1966) (a statute of limitations applies only to those actions that are specifically enumerated therein). All causes of action not enumerated in one of these sections were to be governed by the three-year general statute of limitations contained in §12-301(8).

Moreover, where there is substantial doubt as to which of two periods of limitation is applicable, the longer periods should be held to apply. *Sonne* v. *Sachs,* 314 A.2d 194 (Del. 1978); *Mathews* v. *Travelers Indemnity Ins. Co.,* 245 Ark. 247, 432 S.W.2d 485 (1968), 51 Am.Jur.2d, Limitation of Actions §63 (1970).

Appellants' Count I claims for intentional infliction of emotional distress and intentional infliction of cruel, inhuman and degrading treatment are not barred by the statute of limitations because they were brought within the applicable three-year statute of limitations contained in D.C. Code §12-301(8).

B. Appellants' Claims in Counts II, III and V are Governed by the Three-Year Statute of Limitations Set Forth in D.C. Code §12-301(8).

The three-year limitation period provided for in D.C. Code §12-301(8) applies to the causes of action asserted in Counts II, III and V because no other limitation provision in the D.C. Code is analogous to these claims.

Counts II and III of the Complaint allege, respectively, tortious actions in violation of the Law of Nations and tortious actions in violation of the treaties of the United States.[14] The District Court held that the allega-

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[14] Count V alleges a conspiracy to commit the aforementioned tortious actions.

tions in these counts merely apply different labels to the common law tort claims alleged in Count I and, hence, are governed by the one-year period of limitations prescribed by D.C. Code §12-301(4) for "libel, slander, assault, battery, mayhem, wounding, malicious prosecution or false imprisonment." Opinion and Order at 12-13, J.A., Vol. II at 133a-134a. The District Court's holding fundamentally misperceives the nature of the claims alleged in Counts II, III and V.

A tort, generally speaking, is an invasion of a legally protected interest that results in compensable damage. See Blum and Steinhardt, *supra.*, at 88, note 140. The tort claims alleged in Counts II, III and V are qualitatively different from the common law intentional torts alleged in Count I. These tort claims are different from the common law tort claims asserted in Count I because the legally protected interests at stake and the nature and purpose of the tortious conduct at issue are different.

In Count II, appellants are seeking damages for injuries and death proximately resulting from the intentional invasion of interests protected by the Law of Nations. The Law of Nations does not protect a person from simple assault, battery or false imprisonment. Where, as in the instant case, internationally recognized human rights have been brutally violated by acts of terrorism aimed not just at the individual but also at the government of a state and the international community, federal common law affords a distinct right of recovery. See *Filartiga* v. *Pena-Irala, supra,* 630 F.2d at 888-889.

The treaties of the United States relied upon by plaintiffs in Count III protect those rights expressly or impliedly created by the language of the treaties which are distinct from and different in nature and kind from the simple torts of assault, battery and false imprisonment.

A rationale similar to that relied upon by the District Court herein, raised in support of a motion to dismiss for lack of subject matter jurisdiction, was rejected by this Court in *Payne* v. *Government of District of Columbia,* supra. In *Payne,* plaintiffs' asserted claims based upon violation of their Fifth Amendment rights arising out of the action of a District of Columbia police officer in allegedly wilfully and maliciously aiming and several times discharging a firearm at plaintiffs while they occupied an automobile. In the course of rejecting the District of Columbia's argument that the case was a simple tort case, the outcome of which depended exclusively on common law principles, the Court noted:

> It would appear that *the interests protected by Federal Constitutional law and local assault law are not congruent* and that *injuries inflicted by officers acting under color of state law are significantly different in kind from those resulting from acts of private persons. Payne* v. *Government of the District of Columbia,* supra, note 32, 182 U.S. App. D.C. at 196, 559 F.2d at 817 (per Robinson C.J. with Tamm C.J., concurring in the result). [Emphasis added]

Similarly, in the instant case, the legal injuries for which redress is sought and the legal interests that the federal causes of action asserted in Counts II, III and V seek to vindicate differ significantly in kind from those addressed by the common law torts of assault, battery and false imprisonment.

Where a person seeks vindication of a federal right (and this includes rights under the law of nations incorporated in the federal law) for which Congress has not prescribed a limitations period, the Federal Court will adopt the period of the most analogous statute of the

state in which it sits, unless adoption of this period would conflict with the federal policy underlying the cause of action or would amount to a discriminatory restriction of a federal right of action. *Laffey* v. *Northwest Airlines, Inc.*, 185 U.S. App. D.C. 322, 567 F.2d 429 (1976), *cert. denied*, 434 U.S. 1086.

Since the legal interests protected by the federal rights that form the basis for plaintiffs' claims in Counts II, III and V are "significantly different in kind" from those protected by the common law causes of action for assault, battery and false imprisonment, D.C. Code §12-301(8) is the most analogous state statute for plaintiff's federal claims. No D.C. Code limitation provision for specifically enumerated causes of action can be considered analogous. D.C. Code §12-301(8) provides in such a circumstance that the applicable period of limitations is three years. This provision has been held to be sufficiently broad to include enforcement of federally-created rights for which Congress did not provide a specific limitations period. *Cassel* v. *Taylor*, 100 U.S. App. D.C. 153, 243 F.2d 259 (1957); see also, *Laffey* v. *Northwest Airlines, Inc.*, 481 F.Supp. 199 (D.D.C. 1974). Since appellants' federal causes of action were brought within the three-year limitations period prescribed by D.C. Code §12-301(8), they are not barred by the statute of limitations.

Moreover, the one-year statute of limitations contained in the D.C. Code §12-301(4) must not be applied to bar any of the federal claims of any of the appellants because to do so would create a conflict with the federal policies underlying those causes of action.

One of the recognized exceptions to the application of the most analogous state statute of limitations to a federal claim for which no federal limitation has been

enacted is when to do so "would create important conflicts with the federal policy underlying the cause of action." *Laffey* v. *Northwest Airlines, Inc., supra.,* 185 U.S. App. at 359, 567 F.2d at 468.

In ratifying the treaties and enacting the statutes relied upon herein, including 28 U.S.C. §1350, it is reasonable to infer that Congress did not intend that the exercise of the federal rights thereby created was to be burdened by an unreasonably short state statute of limitations. This Court should borrow the particular limitations period prescribed by the District of Columbia "that best effectuates the federal policy involved." *Forrestal Village, Inc.* v. *Graham,* 179 U.S. App. D.C. 225. 227, 551 F.2d 411, 413 (1977). The federal policy underlying the creation of the federal rights relied upon by the plaintiff can best be effectuated by the borrowing of the three-year limitations period of D.C. Code §12-301(8), which would enable the federal claims of all plaintiffs to be vindicated.

C. Irrespective of which Statute of Limitations is Found to be Applicable, None of the Claims of the Minor Appellants can be Barred by the Statute of Limitations.

In holding that the claims of all appellants were barred by the statute of limitations, the District Court ignored the fact that thirty-four of the persons killed or maimed in this terrorist attack were under eighteen at the time of the attack, and did not attain the age of eighteen before one year prior to the filing of these complaints. D.C. Code §12-302 provides, in pertinent part, that:

> (a) except as provided by subsection (b) of this section, when a person entitled to maintain an action is, at the time the right of action accrues: (1) under 18 years of age; . . ., he or his proper representative

> may bring action within the time limit after the disability is removed.

Hence, none of the claims of any of the appellants in these actions who were under age 18 at the time the terrorist attack occurred, and did not reach age 18 before one year prior to the filing of the complaints, can be barred by the statute of limitations, irrespective of which statute of limitations is found to be applicable.

APPENDIX F

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 81-1870 and 81-1871

HANOCH TEL-OREN, *et al.*,

Appellants,

v.

LIBYAN ARAB REPUBLIC, *et al.*,

Appellees.

Appeal from the United States District Court
for the District of Columbia

CERTIFICATE REQUIRED BY RULE 8(c) OF THE
GENERAL RULES OF THE UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

The undersigned, counsel of record for Appellee National Association of Arab Americans, Inc., certifies that the following listed parties appeared below:

Hanoch Tel-Oren, individually and
in his capacity as father,
on behalf of the deceased Imry Tel-Oren;

Sharona Tel-Oren;

Adiel Tel-Oren;

Reviva Tel-Oren, a minor suing by and through her guardian and next friend, Hanoch Tel-Oren;

Nir Tel-Oren;

Joseph Hochman, individually and in his capacity as husband and father, on behalf of the deceased, Rebecca Hochman, Ilan Hochman and Roy Hochman;

Monique Enekave, individually and in her capacity as wife and mother, on behalf of the deceased, Chaviv Enekave, Isaac Enekave and Galit Enekave;

Tal Enekave, a minor, suing by and through her guardian and next friend, Monique Enekave;

Anat Enekave, a minor, suing by and through her guardian and next friend, Monique Enekave;

Adina Enekave, a minor, suing by and through her guardian and next friend, Monique Enekave;

Adina Haloune, individually and in her capacity as wife, on behalf of the deceased, Joseph Haloune;

Tamar Elefand, individually and in her capacity as wife and mother, on behalf of the deceased, Erez Elefand;

Ronit Elefand, a minor, suing by and through her guardian and next friend, Tamar Elefand;

Maya Susinsky Schur, individually and in her capacity as daughter, on behalf of the deceased, Joseph Susinky and Rena Katia Susinsky;

Eliezer Kroytatro;

Isaac Amir;

Ettel Sacherbrot;

Isaac Mishkal, individually and in his capacity as father, on behalf of the deceased Yoav Mishkal;

Rachel Mishkal;

Ruth Mishkal, a minor, suing by and through her guardian and next friend, Isaac Mishkal;

Joseph Hadany, individually and in his capacity as father, on behalf of the deceased, Naama Hadany;

Levana Hadany;

Ayelet Hadany, a minor, suing by and through her guardian and next friend, Joseph Hadany;

Simacha Gal-On, individually and in his capacity as father, on behalf of the deceased, Liat Gal-On;

Shoshana Gal-On;

Idan Gal-On, a minor, suing by and through his guardian and next friend, Simacha Gal-On;

Lily Glottman, individually and in her capacity as wife, on behalf of the deceased, Simon Glottman;

Anat Glottman, a minor, suing by and through her guardian and next friend, Lily Glottman;

Ilan Glottman, a minor, suing by and through his guardian and next friend, Lily Glottman;

Carmela Rosner, individually and in her capacity as wife, on behalf of the deceased, Tuvia Rosner;

Mordechai Shefer;

Tova Aharonovits, individually and in her capacity as mother, on behalf of the deceased, Revital Aharonovits;

Gideon Haas;

Miriam Haas;

Michelle Haas, a minor, suing by and through her guardian and next friend, Gideon Haas;

Shlomo Zait, in his capacity as father, on behalf of the deceased, Mordechai Zait;

Ruth Drory, individually and in her capacity as wife, on behalf of the deceased, Amnon Drory;

Michael Drory, a minor, suing by and through his guardian and next friend, Ruth Drory;

Ayelet Drory, a minor, suing by and through her guardian and next friend, Ruth Drory;

Albert Ashkenazi, individually and in his capacity as husband, on behalf of the deceased, Mathilda Ashkenazi;

Yechiel Leibovici, individually and in his capacity as husband, on behalf of the deceased, Malca Leibovici;

Manashe Malca;

Eve Malca;

Abraham Shamir;

Iris Shamir, a minor, suing by and through her guardian and next friend, Abraham Shamir;

Ayelet Shamir, a minor, suing by and through her guardian and next friend, Abraham Shamir;

Esther Menashrov, in her capacity as wife, on behalf of the deceased, Utri Menashrov;

Jacob Besterman, in his capacity as father, on behalf of the deceased, Judah Besterman;

Simon Segev, in his capacity as father, on behalf of the deceased, Jacob Segev;

Judith Eshet, in her capacity as wife, on behalf of the deceased, Zvi Eshet;

Isaac Vachs;

Nessa Schwarz;

Joseph Savechnik;

Ella Savechnik;

Abraham Perets;

Shlomo Zait;

Judith Zait;

Gabriel Zait, a minor, suing by and through his guardian and next friend, Shlomo Zait;

Yfaat Zait, a minor, suing by and through her guardian and next friend, Shlomo Zait;

Alexander Jaacobi;

Ella Jaacobi;

Oded Jaacobi, a minor, suing by and through his guardian and next friend, Tirtza Jaacobi;

Usy Aviasaf;

Bruria Aviasaf;

Michelle Aviasaf, a minor, suing by and through her guardian and next friend, Uzy Aviasaf;

Esther Aviasaf, a minor, suing by and through her guardian and next friend, Uzy Aviasaf;

Bilhah Sela;

Alegra Cohen, in her capacity as mother and mother-in-law, on behalf of the deceased, Ziona Luzia and Abraham Luzia;

Jacob Polak, individually and in his capacity as father, on behalf of the deceased Shlomo Polak.

All of the above-listed persons appeared as plaintiffs and, on appeal, seek reversal of the June 30, 1981 Memorandum Opinion and Order of the District Court which dismissed their Complaints.

The following parties appeared as defendants before the District Court and except as noted below will seek affirmance of the District Court's decision of June 30, 1981.

National Association of
Arab Americans;

Palestine Congress of
North America;

Palestine Information Office.

The following parties were named as defendants but did not enter a formal appearance:

Libyan Arab Republic;

Palestine Liberation Organization.

Counsel understands that Hanoch Tel-Oren, *et al.*, are not pursuing this appeal against the Palestine Congress of North America, one of the defendants in the District Court.

The National Association of Arab Americans, Inc. has one subsidiary, the Middle East Policy and Research Corporation. The National Association of Arab Americans also has numerous chapters throughout the United States which are not separately listed herein.

These representations are made in order that Judges of this Court, *inter alia,* may evaluate possible disqualifications or recusal.

Cherif Sedky
Attorney of Record for the
National Association of Arab
Americans, Inc.

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 81-1870 and 81-1871

HANOCH TEL-OREN, *et al.*,

Appellants,

v.

LIBYAN ARAB REPUBLIC, *et al.*,

Appellees.

Appeal from the United States District Court
for the District of Columbia

BRIEF OF APPELLEE NATIONAL ASSOCIATION OF ARAB AMERICANS, INC.

Introduction

Hanoch Tel-Oren, *et al.*, ("Plaintiffs") have appealed the District Court's June 30, 1981 Memorandum Opinion and Order dismissing the Complaints against all defend-

ants, including the National Association of Arab Americans, Inc. ("NAAA"). The District Court dismissed the Complaints on two independent grounds: lack of subject matter jurisdiction and expiration of the applicable statute of limitations. J.A. Vol. II, at 123a-135a. Plaintiffs have appealed both cases for dismissal, although they have now abandoned certain alleged jurisdictional bases and certain alleged causes of action.[1]

Statement Required by Rule 8(b) of the General Rules of the United States Court of Appeals for the District of Columbia Circuit

Counsel for the NAAA believe that the pending case has not previously been before this Court, or any other court, under the same or similar title. Counsel is unaware of any other related cases, either presently pending in this Court or in any other court, or that may be presented to this Court or to any other court in the future.

Statement of the Case

Insofar as the NAAA is concerned, Plaintiffs' "Statement of the Case" and "Statement of Facts"[2] omit perti-

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[1] Before the District Court, Plaintiffs alleged subject matter jurisdiction to litigate claims against the NAAA pursuant to 28 U.S.C. § 1332 (diversity) and 28 U.S.C. §§ 1330, 1602-11 (Foreign Sovereign Immunities Act). J.A. Vol. I, at 7a. Plaintiffs also alleged in Count IV of the Complaint that they had causes of action resulting from alleged violations of certain criminal statutes. J.A. Vol. I, at 29a-32a. The District Court denied these claims. J.A. Vol. II, at 123a-124a, 132a. Plaintiffs have not contested these rulings on appeal.

[2] Pages 8-17 of Plaintiffs' Brief in this Court, dated November 16, 1981 (hereinafter cited as "Plaintiffs' Brief").

nent factual data which were important to the District Court's decision. Accordingly, the NAAA presents the following Statement of the Case concerning the NAAA's alleged responsibility for the injuries Plaintiffs suffered.

These consolidated cases[3] involve Plaintiffs' claims for damages for intentional torts allegedly committed during a violent attack on a bus near Tel Aviv, Israel, on March 11, 1978. Plaintiffs allege that the attack was carried out by 13 members of the El Fatah faction of the Palestine Liberation Organization ("PLO"), who were acting at the direction of the PLO. J.A. Vol. I, at 15a-18a.[4] There is no allegation of any direct NAAA involvement in the bus attack.

Notwithstanding the lack of any allegation that NAAA participated in the March 11 attack, Plaintiffs allege that the NAAA is nevertheless legally responsible for the injuries they suffered. The basis for such liability is alleged in the Complaint as follows:

> The NAAA, together with the other defendants, *planned* this terrorists operation and the tortious and criminal acts committed against the plaintiffs; *conspired to commit* this terrorist operation and the tortious and criminal acts committed against the plaintiffs; *raised funds* to support this terrorist operation and the tortious and criminal acts committed against

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[3] In the District Court Plaintiffs brought two actions, one on behalf of persons injured in the March 11, 1978 incident and one on behalf of those killed in the incident. This Court on August 27, 1981, consolidated the cases for consideration on appeal.

[4] Plaintiffs have alleged on appeal that the bus incident was part of a "PLO and Libyan plot to terrorize the civilian population of Israel." Plaintiffs' Brief, p. 17.

> the plaintiffs; *procured arms, boats, hand grenades and other equipment* for this terrorist operation and the tortious and criminal acts committed against the plaintiffs; and otherwise *directed, participated in and acted in furtherance* of this terrorist operation and the tortious and criminal acts committed against the plaintiffs.

J.A. Vol. I, at 20a (emphasis supplied). These allegations were virtually word-for-word identical to the allegations made against two other defendants, the Palestine Information Office and the Palestine Congress of North America.[5] The NAAA answered and denied any involvement in the March 11 incident. J.A. Vol. I, at 86a. Indeed, the NAAA pointed out in its Motion to Dismiss the Complaints that it had condemned the March 11 incident, as well as Israel's retaliatory invasion of South Lebanon, in a press statement issued only 4 days after the bus attack. J.A. Vol. I, at 121a, 155a, 163a.

In their Complaints filed in the District Court, Plaintiffs provided absolutely no factual basis for naming the NAAA as a defendant. Rather, only conclusory allegations such as funding and procuring arms were made. Accordingly, the NAAA, in its Motion to Dismiss the Complaints, challenged Plaintiffs to demonstrate at least *some* factual basis for naming the NAAA as a defendant. J.A. Vol. I, at 121a, 122a, 144a.[6] The NAAA did not request

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[5] J.A. Vol. I, at 20a-21a. These two defendants did not even exist at the time of the March 11, 1978 bus incident, making Plaintiffs' allegations against them patently absurd. *See* J.A. Vol. I, at 121a. Such defects in Plaintiffs' pleading support the NAAA's belief that Plaintiffs lack any factual basis for their allegations against the NAAA.

[6] The NAAA suspected that there was no factual basis whatsoever for naming the NAAA in the Complaints and that the Plaintiffs' true motivation was to hamper the NAAA in its representation of Arab Americans.

Plaintiffs to lay out their entire case prior to an opportunity to pursue discovery. Rather, the NAAA stated as follows:

> We recognize that plaintiffs cannot be expected to present their entire case at this time. However, the NAAA contends that there is simply no basis whatsoever for the naming of the NAAA as a defendant in these actions, as documented in Mr. Baroody's Affidavit. The NAAA and this Court, therefore, are entitled to a demonstration *now* that plaintiffs *do* have a tangible basis for having named the NAAA as a defendant.

J.A. Vol. I, at 144a.

The NAAA had good reason to be shocked at being named as a defendant in these actions and to demand a factual demonstration of the bases, if any, for Plaintiffs' action. The NAAA is a well-known and widely respected organization whose members are American citizens of Arab descent. Its primary purpose is to represent the two million American citizens of Arab ancestry in matters relating to the United States' national and international interests and to fight institutionalized prejudice against Arab Americans. The NAAA has been warmly received by the American government. Indeed, it has received messages of appreciation and well-wishes from Presidents Ford and Carter every year since 1975. J.A. Vol. I, at 154a-162a. For example, on April 12, 1976, President Ford wrote:

> Your organization has done much to enhance understanding and goodwill between the people of the U.S. and our friends in Arab nations. Such efforts help us greatly in attaining the final peaceful settlement in the Middle East to which our Government remains committed. *I commend you in fostering ties that are*

> *essential to our common goal of peace,* as a natural adjunct to our governmental efforts to forge mutually beneficial political and economic ties in that region.

J.A. Vol. I, at 158a (emphasis supplied). Two years later, President Carter wrote on March 8, 1978, just three days before the bus incident:

> I have great respect for your organization's important role in representing the values and political views of the large body of American citizens who share a common Arab heritage. Your leaders have met on numerous occasions with members of my staff, and I have had the opportunity to meet with your President, Joseph Baroody, and others at the White House. *I commend your responsible efforts to ensure that the views of Arab Americans are widely heard and properly understood.*

J.A. Vol. I, at 160a (emphasis supplied).

On April 30, 1981, Plaintiffs responded to the NAAA's Motion to Dismiss. *See* J.A. Vol. II, at 1a, *et seq.* Plaintiffs' ressponse confirmed the NAAA's conviction that Plaintiffs had *no* factual basis whatsoever to name the NAAA as a defendant. Indeed, while Plaintiffs had alleged that the NAAA had "planned," "conspired to commit," "raised funds," "procured arms, boats, hand grenades and other equipment," and "otherwise directed, participated in and acted in furtherance of" the March 11 bus incident (J.A. Vol. I, at 20a), *in fact* Plaintiffs had:

— No evidence whatsoever that the NAAA planned the March 11 incident. Plaintiffs alleged instead that it was the PLO and Libya, *not the NAAA,* which planned the March 11 incident and mission. J.A. Vol. II, at 12a; Plaintiffs' Brief, p. 10.

— No evidence whatsoever that the NAAA had conspired to commit the incident. Plaintiffs alleged instead that the PLO and Libya, *not the NAAA,*

formulated the mission resulting in the March 11 attack. Plaintiffs' Brief, p. 10. Indeed, Plaintiffs described no act or incident involving the NAAA which could even remotely connect the NAAA to any acts in connection with the bus incident.

— No evidence whatsoever that the NAAA had raised funds to support this incident. Plaintiffs alleged instead that it was the PLO, *not the NAAA*, which had raised funds for the operation. J.A. Vol. II, at 14a-15a.

— No evidence whatsoever that the NAAA had procured arms, boats, hand grenades and other equipment for this incident or any other incident. Plaintiffs alleged instead that it was Libya and the PLO, *not the NAAA*, which procured the necessary weapons. J.A. Vol. II, at 14a.

— No evidence whatsoever that the NAAA had otherwise directed, participated in or acted in furtherance of the incident.[7]

Instead of producing any factual support for the allegations in the Complaint, Plaintiffs disclosed on April 30, 1981 that their "case" against the NAAA rested, in fact, on three alleged "facts" concerning Hisham Sharabi, a professor at Georgetown University and a past president of the NAAA. These "facts"—the sole basis for naming the NAAA as a defendant—are alleged to be as follows:

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[7] In view of the complete lack of a factual record to support their baseless allegations, it is astonishing that Plaintiffs before this Court of Appeals persist in alleging that "the NAAA funded, assisted in the funding, assisted the obtaining of arms, ratified, encouraged, apologized for and otherwise acted in furtherance of the PLO and Libyan plot to terrorize the civilian populations of Israel." Plaintiffs' Brief, p. 17. There is *no factual support* in the record for such statements.

(1) The *Washington Post* on August 2, 1978——4½ *months after the attack*—reported that Professor Sharabi did not condemn *per se* the use of violence by the PLO in its struggle to regain a homeland for the Palestinian people and that the March 11, 1978 incident showed that the Palestinians are willing " 'to hurl their bodies against the monster.' " J.A. Vol. II, at 11a.[8]

(2) Professor Sharabi is purported to have stated in an introduction to a book, *published in 1973,* describing the Palestinian resistance movement subsequent to the Israeli occupation of Palestine, that "the organized violence of the oppressed Palestinians" and their "armed struggle" had enabled the Palestinian resistance movement for self-determination to "organiz[e] the people for carrying out political struggle." Professor Sharabi is alleged

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[8] The NAAA provided the District Court with the full *Washington Post* article. Supp. J.A. at 15a-16a. The article does not link Professor Sharabi or the NAAA to the March 11 incident in any way. Indeed, Professor Sharabi made clear that he favors a negotiated settlement of the Palestine question.

> A settlement [must be] based on full rights of Palestinians, particularly self-determination and complete withdrawal of Israel from occupied areas and total sovereignty for Palestinians. Anything short of that is inadequate. It must include the Gaza Strip and West Bank and East Jerusalem . . . .

Supp. J.A. at 16a. Moreover, with respect to the bus incident itself, Professor Sharabi expressed his dismay at the incident, calling it "politically unfortunate, humanly unfortunate," while likening it to tactics utilized by Israeli Prime Minister Begin at the time he headed the "terrorist group" known as the Irgun when Israel was first created in 1948. Supp. J.A. at 16a.

to have made similar statements in a *1972 publication.* J.A. Vol. II, at 15a-16a.[9]

(3) Plaintiffs alleged that Professor Sharabi "was and remains a close personal friend of Yasar [sic] Arafat, leader of the PLO, and was and remains in close consultatation with Arafat. Sharabi has actually been named as a possible member of a PLO government in exile." J.A. Vol. II, at 12a.[10]

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[9] Plaintiffs' attempts to link Professor Sharabi's alleged publications 5-6 years earlier to terrorist activities in 1978 is ludicrous. The first of the publications did not even contain Professor Sharabi's views at *all.* See J.A. Vol. II, at 108a; Supp. J.A. at 17a-40a. The second publication, *Shu'on Falastiniyeh* (Palestinian Affairs), makes clear Professor Sharabi's view that Palestinian resistance, and indeed violent struggle, is directed at a governmental structure—Zionism—with which the Palestinians (and other Arab countries) are still at war—and have been since 1948. J.A. Vol. II, at 108a-109a; Supp. J.A. at 41a-58a (complete Sharabi article). Far from seeking the genocide of the Israeli people as suggested by Plaintiffs, the Palestinian armed struggle of which Professor Sharabi wrote *in 1972,* sought to establish a secular democratic state within which Jews and Palestinians (Christian and Muslim) could live in harmony:

> The [Palestinian] organizations all share the conviction that liberation must in the end be *based on Palestinian-Jewish accord* outside the framework of Zionism. But the task of breaking the Zionist superstructure cannot be carried out by the Palestinians alone, in their capacity as an outside source. To succeed, this project must also become a Jewish undertaking. . . .

J.A. Vol. II, at 109a; Supp. J.A. at 51a (emphasis supplied).

[10] Plaintiffs' attempt to impose liability on the NAAA because of an alleged association by Professor Sharabi with Yassir Arafat or the PLO is completely baseless. This, as well as Plaintiffs' arguments concerning Professor Sharabi's alleged

(Continued on next page)

In short, the undisputed factual background presented to the District Court was clear: (1) there was no link between the NAAA and the March 11, 1978 bus incident; (2) Plaintiffs' subsequent pleadings before the District Court made clear that they had no basis whatsoever to support any of the allegations made against the NAAA in the Complaint; and (3) the sole basis for naming the NAAA as a defendant were the alleged statements and associations of Professor Sharabi, statements and associations which Plaintiffs assume have some sort of significance in the case and which Plaintiffs further assume may be attributed to the NAAA. On the foregoing record, the District Court found that the NAAA had "not been connected to the claimed torts sufficiently to permit the action to proceed against [it]." J.A. Vol. II, at 130a.

Summary of Argument

The District Court ruled correctly that 28 U.S.C. § 1350 does not provide subject matter jurisdiction over

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(Continued from previous page)

statements condoning violence, raise profound constitutional issues, as discussed later in this brief. Further, as reported by *The Wall Street Journal* in an article entitled "Not Just Guerrillas," the PLO is, in effect, a government-in-exile for the world's 3.5 million to four million Palestinians. Supp. J.A. at 61a-62a. The PLO has "its own 'state department,' welfare agency, hospital chain [in 1979, consisting of 12 hospitals and 100 clinics], 'national' library, education department, think tank, press agency, radio network and tax-collection system." Supp. J.A. at 61a. As *The Wall Street Journal* recognizes, the PLO, and its many divisions and factions, have numerous legitimate and admirable goals and purposes. *Id.* Thus, "support" of the PLO or its "goals" or association with the PLO cannot, under any circumstances, be blithely assumed to imply support for particular terrorist acts that may be carried out in the name of one faction or another of the PLO.

Plaintiffs' claims against the NAAA. Under Section 1350, Plaintiffs must allege that the NAAA committed a tort against them and that the tort was in violation of a treaty or the law of nations. However, the undisputed facts, even as alleged by Plaintiffs, establish that the NAAA committed no tort, much less one that violates the law of nations or a treaty of the United States.

Plaintiffs cannot confer Section 1350 jurisdiction on the District Court by alleging conspiracy or by reliance on Professor Sharabi's alleged statements and his alleged "association" with Yassir Arafat. The District Court correctly ruled that Plaintiffs' conspiracy allegation was "insubstantial" and fell far short of the specificity required by applicable case law. Professor Sharabi's statements and associations also do not satisfy the Section 1350 requirement that Plaintiffs allege a tort was committed by the NAAA. Indeed, these statements and associations not only are not tortious but constitute the exercise of protected First Amendment rights.

The District Court also correctly ruled that Section 1350 must be narrowly construed. Section 1350 provides jurisdiction where the tort allegedly is committed by a person under guise of official authority. There is no evidence that the NAAA has ever acted pursuant to governmental authority; rather, the NAAA is a private party with no link to any governmental entity.

The District Court ruled correctly that Section 1350 provides subject matter jurisdiction only if Plaintiffs demonstrate that the treaty or law of nations which is relied upon is judicially enforceable. Any other interpretation of Section 1350 would give aliens practically auto-

matic access to the federal courts under circumstances where American citizens have no federal forum. The District Court properly interpreted Section 1350 narrowly so as to avoid such an unintended result.

Finally, Section 1350 does not provide jurisdiction because the March 11, 1978 incident did not violate the law of nations. That tragic event—which the NAAA itself has condemned—is part of the Palestinian/Israeli struggle which has persisted since 1947. As such, there is no broad international consensus that this and other similar incidents violate the law of nations. Since no consensus exists, Section 1350 jurisdiction also is lacking.

The District Court also ruled correctly that there is no "federal question" jurisdiction under 28 U.S.C. § 1331. Plaintiffs' claims do not arise under any federal statute, treaty, or the law of nations. Rather, these claims constitute common law intentional torts, which will not require any reference to federal law to adjudicate. Further, the laws and treaties referred to by Plaintiffs do not provide Plaintiffs with a private right of action. Since no judicially enforceable rights were created under the "laws" cited by Plaintiffs, Section 1331 jurisdiction is lacking.

The District Court ruled that Plaintiffs' claims also are barred by the one-year statute of limitations of D.C. Code § 12-301(4). This ruling should be affirmed. The D.C. Code specifies a one-year limitation period for intentional torts such as assault, battery and false imprisonment. These are the very torts which Plaintiffs have alleged in this case and, accordingly, the District Court properly ruled that they are time-barred.

Plaintiffs attempt to avoid the limitation period by calling certain of these alleged torts by names not specifically enumerated in D.C. Code § 12-301(4). However, the *substance* of Plaintiffs' claims is an allegation of violent intentional torts of the kind for which the Code specifies a one-year limitation period. The District Court was clearly correct in disregarding Plaintiffs' labels and instead basing its ruling on the substance of the claims.

Argument

I. The District Court Was Correct in Holding that the Alien Tort Statute, 28 U.S.C. § 1350, Does Not Afford Subject Matter Jurisdiction over Plaintiffs' Tort Claims Against the NAAA.

The District Court held that 28 U.S.C. § 1350 provides no subject matter jurisdiction over Plaintiffs' claims against the NAAA. The Court rested its decision on two bases: that no tort was alleged to have been committed by the NAAA; and that Plaintiffs failed to demonstrate a basis in the law of nations or any treaty of the United States for the torts alleged by Plaintiffs against the NAAA. The NAAA demonstrates below that the District Court was correct in finding no Section 1350 jurisdiction.

A. Plaintiffs Failed to Allege Tortious Conduct by the NAAA.

Section 1350 is specific in its jurisdictional grant to the district courts:

> The district courts shall have original jurisdiction of any civil action by an alien *for a tort only*, committed in violation of the law of nations, or a treaty of the United States. 28 U.S.C. § 1350 (1976) (emphasis supplied).

Thus, under Section 1350, a court must find that the plaintiff has alleged that each defendant has committed a tort against the plaintiff. With respect to the NAAA, the District Court found that the tortious allegations were "clearly insubstantial" and, accordingly, that the Plaintiffs had "not satisfied the requirement of § 1350 that a tort be stated in violation of the law of nations or a treaty of the United States . . . ." J.A. Vol. II, at 130a-131a.

The District Court's holding was clearly correct. As documented in the Statement of the Case, *supra,* Plaintiffs have no factual basis to assert that the NAAA had any involvement in the March 11 incident and present not even a shred of evidence that the NAAA otherwise supported that attack. In short, Plaintiffs do not allege any tortious acts whatsoever by the NAAA, much less tortious acts by the NAAA which allegedly violate the law of nations or a treaty of the United States. Accordingly, the Section 1350 jurisdictional bases were clearly not met by Plaintiffs and dismissal was proper.

Plaintiffs still persist in their attempt to hold the NAAA legally responsible for the March 11 incident, notwithstanding the NAAA's lack of connection to that event. In this effort, Plaintiffs rest their case on either of two improper grounds—that the NAAA is liable under an unarticulated conspiracy theory[11] or that the NAAA is liable because of the alleged statements and associations of Professor Sharabi. We deal with these in turn.

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[11] Plaintiffs plead civil conspiracy in Count V of the Complaint J.A. Vol. I, at 32a-33a. Since Plaintiffs demonstrate no direct NAAA involvement in the March 11 incident, conspiracy is, in fact, the heart of their case.

1. *Plaintiffs' Conspiracy Allegations Are Insubstantial.*

There are several shortcomings in Plaintiffs' conspiracy theory. First, a conspiracy to commit an intentional tort does not, in fact, constitute a separate "tort."[12] Particularly where, as here, the defendant NAAA clearly never had any role in the conduct (*i.e.*, the attack) which comprised the tortious act, an allegation of conspiracy cannot meet the Section 1350 requirement that the defendant have committed a tort. Moreover, none of the acts alleged to have been performed by the NAAA—devising a plan, providing funds, procuring equipment—could themselves be said to constitute a tort. Since Section 1350 requires, *for jurisdictional purposes,* that *the NAAA* have committed a tort, and since none of the acts alleged to have been performed by the NAAA constitute a tort, there is no Section 1350 jurisdiction over the NAAA.

Second, the law is clear that "it is not enough merely to state that a conspiracy has taken place." 2A Moore's Federal Practice ¶ 8.17[5], at 8-181 (2d ed. 1981). Rather, facts to support the conspiracy allegation must also be pleaded. *Heart Disease Research Foundation v. General Motors Corp.,* 463 F.2d 98, 100 (2d Cir. 1972) ("a bare bones statement of conspiracy . . . without any supporting facts permits dismissal."); *Connor v. Real Title Corp.,* 165

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[12] Civil conspiracy is not in itself an actionable tort. It is well established that "the gist of the civil action of conspiracy is the . . . tortious act complained of." *Burns v. Spiller,* 4 F.R.D. 299, 300 (D.D.C. 1945), *aff'd,* 161 F.2d 377 (D.C. Cir.), *cert. denied,* 332 U.S. 792 (1947). *See also Nalle v. Oyster,* 230 U.S. 165 (1913); 16 Am. Jur. 2d *Conspiracy* § 49 (1979); Prosser, *Handbook of the Law of Torts,* § 47, at 293 (4th ed. 1971).

F.2d 291, 294 (4th Cir. 1947) ("[The conspiracy] allegation is much too vague and general and must fall, since it is unsubstantiated by any facts disclosed in the pleadings."); *Black & Yates v. Mahogany Ass'n,* 129 F.2d 227 (3d Cir. 1941), *cert. denied,* 317 U.S. 672 (1942). *See also Ostrer v. Aronwald,* 567 F.2d 551 (2d Cir. 1977); *Powell v. Workmen's Compensation Board,* 327 F.2d 131 (2d Cir. 1964); *Jacobs v. Tenney,* 316 F. Supp. 151 (D. Del. 1970).

In *Granville v. Hunt,* 411 F.2d 9 (5th Cir. 1969), the Court of Appeals for the Fifth Circuit addressed the pleading requirements for a civil conspiracy. In *Granville,* the court dismissed for failure to state a claim, a complaint much like plaintiffs' herein, for "conspiracy" to deprive plaintiff of constitutional rights and to subject plaintiff to cruel and unusual punishment. The court explained its ruling, which is directly applicable here, as follows:

> *The appellant has failed to allege any facts showing either the existence or the execution of the claimed conspiracy.* The pleadings contain only *bare allegations* that the defendants conspired against the appellant and that as a result of this conspiracy, he was subjected to cruel and unusual punishment. These allegations contain mere bare bones and are totally without any fleshing to show a link between the alleged conspirators. They also fail 'to allege any overt acts related to the promotion of the claimed conspiracy' . . . . In short, [*s*]*uch pleading is clearly insufficient.* 'Although pleadings are given a liberal construction in the federal courts, the Rules contemplate some factual statement in suppport of the claim. General allegations of this kind unsupported by any factual statements have generally been rejected as insufficient.' . . . '[T]he complaint must do more than merely state vague and conclusionary allegations respecting the existence [and operation] of a conspiracy.'

Id. at 11 (citations omitted, emphasis added, and bracketed language in original).

Under the foregoing precedents, Plaintiffs' conspiracy allegations against the NAAA clearly constitutes no more than bare allegations and "are completely without factual underpinnings." *Id.* Since Plaintiffs' entire case rested on its conspiracy allegation and since that allegation was clearly insufficient, the District Court was correct in holding that Section 1350 jurisdiction was lacking. *See* J.A. Vol. II, at 130a-131a. Thus, the District Court found:

> As to . . . the NAAA . . . plaintiffs' allegations of tortious conduct and conspiracy are clearly insubstantial . . . [T]here are no specific allegations whatsoever to support a claim of conspiracy.
>
> * * *
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> These . . . defendants have not been connected to the claimed torts sufficiently to permit the action to proceed against them. Various courts have considered complaints *such as the instant one* and held that vague, conclusory allegations of conspiracy are insufficient to predicate an action for damages.

J.A. Vol. II, at 130a (captions added, citations omitted).

Plaintiffs assert, nevertheless, that the allegations of "fact" set out in the Complaint and in their Memorandum in Opposition to Defendant's Motion to Dismiss (J.A. Vol. II, at 1a), had to be accepted by the District Court as true. Specifically, Plaintiffs state:

> In opposing a motion to dismiss the complaint for lack of subject matter jurisdiction under § 1331 or 1350, the plaintiffs do not have a duty and are under no obligation to substantiate the allegations in the

complaint, particularly when the discovery process has not yet even begun.

J.A. Vol. II, at 17a-181a.

Plaintiffs have missed the point. While they are indeed not obligated to substantiate the allegations of their complaint in order to defeat a motion to dismiss, they *are* required to state the facts upon which their claim is based. Mere conclusory allegations are not enough, and are not taken as true by a court in considering a motion to dismiss. *Hess v. Petrillo,* 259 F.2d 735, 736 (7th Cir. 1958) ("Mere unsupported conclusions of fact or mixed fact and law are not admitted by a motion to dismiss."); *Blackburn v. Fisk University,* 443 F.2d 121, 123 (6th Cir. 1971) ("... we are not bound by allegations that are clearly unsupported and unsupportable ....").

In the instant action, Plaintiffs "factual" allegations are completely conclusory. They state merely that the NAAA "planned," "funded" and "directed" the March 11 attack, without stating any specific facts upon which these conclusions rest. Indeed, Plaintiffs seem to have pulled these conclusions out of thin air, as they provided no details whatsoever in support thereof when challenged to provide a basis for naming the NAAA as a defendant.[13]

Nor are Plaintiffs entitled to discovery in order to lend substance to their conclusory allegations, as they suggest in their brief. *See* Plaintiffs' Brief, p. 33. As stated

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[13] As noted in the Statement of the Case, Plaintiffs' response to the NAAA's Motion to Dismiss made clear that each of the allegations concerning "funding," "directing" and "planning" the bus incident were directed at the PLO and/or Libya—not to the NAAA.

by the Second Circuit in a somewhat different context, a complaint must stand or fall on its merits and cannot be used as a vehicle for searching out and discovering a right of action. *Fifth Avenue Peace Parade Comm. v. Gray,* 480 F.2d 326, 333 (2d Cir. 1973), *cert. denied,* 415 U.S. 948 (1974). If Plaintiffs have failed to state a claim, they may not use the liberal federal rules of discovery to find one.

This principle is perhaps best stated by Judge Lasker in *Denny v. Barber,* 73 F.R.D. 6 (S.D.N.Y. 1977), *aff'd,* 576 F.2d 465 (2d Cir. 1978). In *Denny,* which involved defendants' motion to dismiss plaintiff's complaint for purported violations of the federal securities laws, the court noted both the "majestic breadth" of the complaint and its complete lack of detail, and granted the motion. *Id.* at 8. Commenting on the effects of allowing such a complaint to go forward, Judge Lasker declared:

> *Complaints should not be conceived merely as tokens, guaranteeing access to a world of discovery.* . . . 'A complaint alleging fraud should be filed only after a wrong is reasonably believed to have occurred; it should serve to seek redress for a wrong, not to find one.' *Neither plaintiff nor his counsel are entitled to roam through a defendant's files at the mere drop of a 'complaint.'*

73 F.R.D. at 10 (emphasis added; citation omitted). *See also McFarland v. Memorex Corp.,* 493 F. Supp. 631, 636-37 (N.D. Cal. 1980); *Berman v. Richford Industries, Inc.,* 26 F.R. Serv. 2d 10, 15-16 (S.D.N.Y. 1978); *City of Gainesville v. Florida Power & Light Co.,* 488 F. Supp. 1258, 1266-67 (S.D. Fla. 1980). Plaintiffs here should not be allowed, on the basis of the token allegations in their Complaint, to roam through the NAAA's files trying to justify this action.

The Supreme Court of the United States has recognized the dangers and unacceptable costs of permitting plaintiffs with groundless claims to go forward with discovery. In *Blue Chip Stamps v. Manor Drug Stores,* 421 U.S. 723 (1975), the Court discussed the possibilities for discovery abuse in Rule 10b-5 cases:

> To the extent that this [discovery] process eventually produces relevant evidence which is useful in determining the merits of the claims asserted by the parties, it bears the imprimatur of [the Federal Rules of Civil Procedure] . . . and of the many cases liberally interpreting them. *But to the extent that it permits a plaintiff with a largely groundless claim to simply take up the time of a number of other people, with the right to do so representing an in terrorem increment of the settlement value, rather than a reasonably founded hope that the process will reveal relevant evidence, it is a social cost rather than a benefit.*

Id. at 741 (emphasis added). *See also Franchise Realty Interstate Corp. v. San Francisco Local Joint Executive Board of Culinary Workers,* 542 F.2d 1076 (9th Cir. 1976), *cert. denied,* 430 U.S. 940 (1977).

Plaintiffs' conspiracy "claim" against the NAAA is groundless.[14] Despite every opportunity to do so, Plaintiffs have failed to alleged a single fact from which it may

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[14] Rule 11 of the Federal Rules of Civil Procedure provides that groundless complaints may be stricken. Although the NAAA did not move under Rule 11 below, it appears now that such a motion would have been equally appropriate. The courts have not hesitated to strike pleadings where it is obvious that they were filed without sufficient grounds. *See, e.g., Incomco v. Southern Bell Telephone and Telegraph Co.,* 558 F.2d 751 (5th Cir. 1977); *Econo-Car International, Inc. v. Antilles Car Rentals, Inc.,* 61 F.R.D. 8 (D.V. Is. 1973); *Freeman v. Kirby,* 27 F.R.D. 395 (S.D.N.Y. 1961).

be inferred that the NAAA participated in this alleged conspiracy. Plaintiffs' conclusory conspiracy allegations do not withstand scrutiny under the Federal Rules or case law, and Plaintiffs are not entitled to discovery in order to find a claim for themselves.

2. *The NAAA May Not be Held Liable for Professor Sharabi's Statements and Associations.*

Since Plaintiffs' "conspiracy" theory is clearly deficient, they must rest their case against the NAAA on Professor Sharabi's alleged statements and associations. However, as demonstrated in the Statement of the Case, the Sharabi statements and associations cannot possibly support imposition of liability.

Assuming *arguendo* nevertheless that Plaintiffs' version of those statements and associations is accurate and relevant and assuming further that Professor Sharabi's statements and associations are properly considered to be made by the NAAA,[15] Plaintiffs still would not have alleged that the NAAA had committed any tort as required by Section 1350. Rather, the Sharabi statements and his alleged associations represent the exercise of protected First Amendment rights and thus cannot form the basis for a tort action.

It is important to keep Professor Sharabi's alleged statements and associations in perspective. First, he allegedly expressed sympathy for the Palestinian cause and for the use of violent means to rectify perceived wrongs. These statements were made 6 years *before* and 4½ months

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[15] There is no evidence that Professor Sharabi was acting on behalf of the NAAA when he made the alleged statements or supposedly "associated" with Mr. Arafat.

after the bus attack. Second, Professor Sharabi also allegedly associated with Yassir Arafat, who allegedly advocates violent acts against Israel, although even Plaintiffs have not suggested that Professor Sharabi actively (or even passively) was involved in or urged the March 11, 1978 incident.

Such expression of views and such associations cannot possibly constitute a "tort" as required by Section 1350. It is an axiomatic principle of Constitutional law that a mere expression of personal belief cannot serve as a basis for finding the NAAA liable for the tortious conduct of others. This particularly is the case when Professor Sharabi's alleged tortious statements were made either 6 years before or 4½ months after the bus incident which is the subject of Plaintiffs' case. *See, e.g., Brandenburg v. Ohio,* 395 U.S. 444, 447 (1969) ("the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."); *Noto v. United States,* 367 U.S. 290 (1961); *Yates v. United States,* 354 U.S. 298, 321 (1957) (" . . . advocacy [of the doctrinal justification of forcible overthrow, with the intent to accomplish such overthrow], even though uttered with the hope that it may ultimately lead to violent revolution, is too remote from concrete action. . . ."). Further, Professor Sharabi's statements were made in a newspaper interview and in a scholarly journal. As such, they do not even remotely approach the kind of incitement for which the NAAA might conceivably be held liable.

Similarly, Plaintiffs' suggestion that tort liability can be based solely upon the political or social views of persons with whom one associates is equally repugnant to basic First Amendment principles. Thus, the fact that Professor Sharabi allegedly associates with the PLO establishes no possible basis for civil liability and cannot possibly constitute a "tort" as required under Section 1350. *See Healy v. James,* 408 U.S. 169, 185-86 (1972) (" . . . it has been established that 'guilt by association alone . . .' is an impermissible basis upon which to deny First Amendment rights," and ". . . the Court has consistently disapproved . . . denying rights and privileges solely because of a citizen's association with an unpopular organization."); *Sawyer v. Sandstrom,* 615 F.2d 311, 317 (5th Cir. 1980) ("knowing association with a group cannot be made a punishable act just because some of the group members are engaged in criminal conduct"). Accordingly, this Court should reject Plaintiffs' blatant attempt to bootstrap their baseless charges against the NAAA. Even if the NAAA did share the general objectives of the PLO, that clearly affords no basis for NAAA responsibility for particular tortious acts alleged in the Complaint.[16]

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[16] Under Plaintiffs' theory, American Irish Catholics who support the overall objective of the Irish Republican Army ("IRA")—that is, the establishment of a separate Catholic state in Northern Ireland—would be liable for all senseless acts of violence committed by IRA members. The argument would go as follows: (1) the IRA is known to commit senseless acts of terror; (2) any active support of the IRA or its objectives, or recognition that the Irish resistance movement is an armed or violent struggle, must be equated to the encouragement and support of IRA terrorist activities; (3) such encouragement of terrorist activities consti-

(Continued on next page)

In short, the fact that certain NAAA members, and the NAAA itself, may have spoken out in favor of Palestinian self-determination, is irrelevant to the liability issues of this case.[17] And even if NAAA members have spoken out in support of armed or violent resistance by the Palestinian people, such expressions cannot support Plaintiffs' allegations of liability against the NAAA for a particular act of terrorism. Section 1350 required Plaintiffs to allege *tortious conduct* by the NAAA before jurisdiction could be found. Plaintiffs did *not* allege such conduct. The District Court accordingly was correct in dismissing Plaintiffs' claims.

(Continued from previous page)

tutes a conspiracy to commit, or the "assistance" in the commission of, any specific terrorist act of the IRA (even if the American IRA supporter had nothing to do with that act). Thus, according to Plaintiffs, if you support the IRA or its objectives—or, for that matter, any political movement that has any connection with violent activities, whether conducted by the entire group, a faction of the group, or even a fanatic who claims association with the group—you had better not publicly express your support or you will face the prospect of billions of dollars in civil liability. Such a theory not only flies in the face of basic American Constitutional principles of free speech and association, but it could be applied to create civil liability for supporters of any movement that regularly, or even occasionally, is forced to resort to armed or violent struggle.

17 Moreover, the NAAA is not alone in taking this position. For example, the General Assembly of the United States, by more than a two-thirds majority, has recognized and affirmed not only "the inalienable rights of all peoples, and in particular . . . the Palestinian people, to freedom, equality and self-determination," but it has also recognized "the legitimacy of their struggles to restore those rights," and has affirmed "man's basic human right *to fight for the* self-determination of his people . . . ." General Assembly Resolution 2787 of December 6, 1971. Supp. J.A. at 12a.

B. Plaintiffs Failed to Demonstrate that the NAAA Committed any Act in Violation of the Law of Nations or Treaties of the United States

The District Court found no Section 1350 jurisdiction for an additional reason: Plaintiffs failed to demonstrate a cause of action under the law of nations or treaties of the United States which would cover the actions alleged to have been committed by the NAAA. J.A. Vol. II, at 131a-132a. Plaintiffs sharply contest the foregoing District Court holding, arguing primarily that it conflicts with the Second Circuit's decision in *Filartiga v. Pena-Irala,* 630 F.2d 876 (2d Cir. 1980).

In *Filartiga,* the Second Circuit held that "deliberate torture perpetrated *under color of official authority* violates universally accepted norms of the international law of human rights, regardless of the nationalities of the parties." 630 F.2d at 878 (emphasis supplied). Indeed, the entire Second Circuit opinion emphasizes repeatedly that the law of nations was violated in that case because the defendant, under official authority of the Paraguayan government, had committed acts which virtually every nation had declared to be illegal when committed by a nation or by one acting on behalf of a nation.

The instant case insofar as the NAAA is involved is entirely different from *Filartiga.* Plaintiffs make no claim that the NAAA or any person acting on behalf of the NAAA was acting or purporting to act in an official capacity such that the law of nations or treaties would attempt to reach and proscribe that conduct. Rather, insofar as Plaintiffs' claims against the NAAA are concerned, Plaintiffs have only alleged conduct by a private party, the NAAA, and no guise of official conduct.

The District Court construed Section 1350 in a rational manner in finding no subject matter jurisdiction. The District Court ruled that Plaintiffs must not only allege a violation of a treaty or the law of nations but also must demonstrate that the provision of international law they rely upon provides a privately enforceable cause of action. Plaintiffs object to the District Court's interpretation of Section 1350, stating that an alien may bring an action in federal court for violation of international law even if that law is not judicially enforceable. Plaintiffs' Brief, pp. 25-29. The NAAA submits that Plaintiffs' interpretation leads to a result that cannot have been intended.

If an American citizen sues in federal court for violation of the law of nations or treaty, he must demonstrate under 28 U.S.C. § 1331 that the provision of international law which is relied upon is judicially enforceable. This is a heavy burden, since the general rule is that treaties are executory and not judicially enforceable absent implementing legislation. *See Diggs v. Richardson,* 555 F.2d 848, 850-51 (D.C. Cir. 1976). Under Plaintiffs' interpretation, however, Section 1350 permits *aliens* far greater access to federal courts than United States citizens. Indeed, aliens would be able to sue in federal court merely by alleging violation of an American treaty, regardless of whether that treaty provides any judicially enforceable rights. The District Court correctly rejected that result and provided the rational interpretation that international law must provide a judicially enforceable right before Section 1350 jurisdiction may be established. This is entirely consistent with the Section 1350 case law which emphasizes

that Section 1350 must be narrowly construed. *See, e.g., IIT v. Vencap Ltd.*, 519 F.2d 1001, 1015 (2d Cir. 1975).[18]

Finally, under any interpretation of Section 1350, the NAAA submits that jurisdiction is lacking because this is *not* an instance where the law of nations or an American treaty has been violated.[19] The law of nations does not cover all possible tortious acts and it does not cover acts merely because they may be reprehensible, cruel or savage. Rather, the law of nations is violated only where there has been a violation "of those standards . . . affecting the relationship between states or between an individual and a foreign state" where those standards are used "by those states for their common good and/or in dealings *inter se*." *IIT v. Vencap*, 519 F.2d at 1015, *quoting Lopes v. Reederei Richard Shroder*, 225 F. Supp. 292, 297 (E.D. Pa. 1963); *see The Paquete Habana*, 175 U.S. 677 (1900) (general assent of nations must be present before principle of international law is judicially enforceable). Where no concensus of view is present as to the prevailing rule of law, the law of nations is not violated. *See Dreyfus v. von*

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[18] The District Court interpreted Section 1350 in a manner which is arguably more restrictive than the Second Circuit's dicta in *Filartiga*. The NAAA submits that the District Court clearly reached the correct result, one which keeps Section 1350 within its intended bounds.

[19] The District Court declined to decide whether the torts alleged in the Complaint violate the law of nations. J.A. Vol. II, at 125a. Plaintiffs have argued at length, however, that the actions of other defendants did violate the law of nations and thus that the District Court had subject matter jurisdiction to consider those claims. By implication, Plaintiffs assert that jurisdiction must therefore be present to adjudicate the claims against the NAAA. *See* Plaintiffs' Brief, pp. 29-32.

Finck, 534 F.2d 24 (2d Cir.), *cert. denied,* 429 U.S. 835 (1976). In short, the law of nations is violated only where there is a clear international consensus condemning the acts in question.

Indeed, the Second Circuit's decision in *Filartiga,* on which Plaintiffs principally rely, supports the proposition that only those acts which are condemned by a clear international consensus fall within the scope of Section 1350. Thus, in reviewing *Filartiga,* commentators have suggested that Section 1350 reaches only such torts as genocide, torture, slavery and summary execution—not intentional torts committed within the context of a bitter and violent political struggle. Blum & Steinhardt, *Federal Jurisdiction Over International Human Rights Claims: The Alien Tort Claims Act After Filartiga v. Pena Irala,* 22 Harv. Int'l. L.J. 53, 87-97 (1981).

Without belittling in any way the injuries Plaintiffs have suffered or condoning the violent acts alleged in the Complaint, the NAAA suggests that this case involves an area where *no* international consensus is present and where, therefore, the law of nations is not violated. To say the least, the disagreement over the Palestinian issue has sharply divided the world community. Israel has been condemned for its many "raids" into Lebanon, which have resulted in thousands of civilian casualties.[20] Many nations have called for creation of a Palestinian state and others

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[20] The United Nations General Assembly, by vote of over two-thirds of the member nations, has recognized and deplored the fact that the rights of Palestinians have been violated by Israel, as evidenced by General Assembly Resolutions 2792 of December 6, 1971, and 2851 of December 20, 1971. Supp. J.A. at 3a-8a.

have even supported the use of violence to accomplish these ends. Indeed, the General Assembly of the United Nations, by more than a two-thirds majority, has recognized and affirmed not only "the inalienable rights of all peoples, and in particular . . . the Palestinian people, to freedom, equality and self-determination," but it has also recognized "the legitimacy of their struggles to restore those rights," and has affirmed "man's basic human right *to fight for the self-determination of his people. . . .*" General Assembly Resolution 2787, December 6, 1971. Supp. J.A. at 11a-12a (emphasis added).

The March 11 incident — which was condemned by the NAAA[21] — cannot be isolated from its context as part of the much larger Palestinian issue which has tragically embroiled Arabs and Jews alike since at least 1947. The NAAA submits that in a geopolitical arena as divided as the Middle East, there is no consensus regarding whether the acts committed on March 11, 1978 violate the law of nations. Indeed, Plaintiffs have conceded the essentially *political* nature of the March 11 incident.

> One of the primary purposes of the March 11 attack was to sabotage the foreign relations of the United States and its negotiations by destroying the positive efforts made in the Camp David accords. It was the intent of the PLO and Libya to conduct such a barbaric attack that would mandate a response by Israel against the Palestine guerrilla basis in southern Lebanon, thus setting off a chain of events which would create a climate making it impossible for any Arab government to negotiate with Israel or for that matter, with the United States.

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21 J.A. Vol. I, at 155a, 163a.

Plaintiffs' Brief, p. 15. Section 1350 was *not* designed to provide jurisdiction to adjudicate claims caught up in such an international political and social dispute. Accordingly, since the international consensus which constitutes a prerequisite to Section 1350 jurisdiction is lacking, the District Court was correct in holding that Section 1350 jurisdiction is not present. Indeed, any different result would open the floodgates to a host of claimants seeking access to the Federal Courts to redress harm committed against them by groups whose ideologies span the entire political spectrum.

II. The District Court was Correct in Ruling that 28 U.S.C. § 1331 Provides no Jurisdiction for Plaintiffs' Claims Against the NAAA.

The District Court ruled that 28 U.S.C. § 1331 did not provide a basis for jurisdiction over Plaintiffs' claims against the NAAA. J.A. Vol. II, at 123a-129a. The Court ruled that none of the criminal statutes, treaties or alleged laws of nations cited by Plaintiffs provided an express or implied cause of action and, consequently, Plaintiffs "fail[ed] to state a cause of action arising under the Constitution, laws or treaties of the United States . . . ." J.A. Vol. II, at 129a. On appeal, Plaintiffs have merely restated arguments that the District Court carefully considered but rejected.[22]

This Court should also reject these arguments. To sustain Section 1331 jurisdiction, Plaintiffs must demonstrate that their claims "arise under" the laws or treaties

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[22] Plaintiffs have abandoned on appeal their claim that selected federal criminal statutes (listed in Count IV of the Complaint) provide a cause of action for the torts alleged in the Complaint. *See* J.A. Vol. I, at 29a-32a.

of the United States. Plaintiffs have failed to demonstrate the requisite nexus to United States law or treaties. Accordingly, this Court should affirm the District Court holding of a lack of Section 1331 subject matter jurisdiction.

Claims do not "arise under" American laws or treaties merely by Plaintiffs' reference in the Complaint to laws or treaties of the United States. *Ivy Broadcasting Co. v. AT&T*, 391 F.2d 486, 492 (2d Cir. 1968); *see Prescription Plan Service Corp. v. Franco*, 552 F.2d 493, 495 (2d Cir. 1977). Rather, as the *Ivy* court stated:

> [T]hat federal law furnishes a necessary ingredient of a claim is insufficient as a basis for federal jurisdiction, *unless the claim presents an issue requiring construction of an Act of Congress or unless a distinctive policy of an Act of Congress requires that federal principles control the disposition of the claim.*

391 F.2d at 493 (emphasis supplied). Similarly, a "court must ascertain from the complaint whether federal law is a *pivotal* issue in the case, one that is basic in the determination of the conflict between the parties." *North American Phillips Corp. v. Emery Air Freight Corp.*, 579 F.2d 229, 233 (2d Cir. 1978) (emphasis supplied). *See also Gully v. First Nat'l Bank*, 299 U.S. 109, 117-18 (1936). In a recent case involving the disasterous oil spill off the French coast by the tanker *Amoco Cadiz*, a federal court articulated the "arising under" test in the following terms:

> A suit arises under the Constitution, laws or treaties of the United States where it *actually and substantially* involves a dispute or controvery concerning the validity or interpretation of such federal issues, the determination of which will have a *direct impact* on the plaintiff's success or failure.

Chapalain Compagnie v. Standard Oil Co. (Indiana) 467 F. Supp. 181, 184 (N.D. Ill. 1978) (emphasis supplied).

In the instant case, no American treaty or the law of nations is a pivotal substantive issue, "the determination of which will have a direct impact on plaintiff's success or failure." Similarly, these cases do not require "construction of an Act of Congress" and they involve no distinctive policy questions which require that federal principles control disposition of the claims. *See Ivy Broadcasting Co. v. AT&T,* 391 F.2d at 493. Rather, as violent as the March 11 incident may have been, this case involves straightforward allegations of intentional torts. This conclusion is not altered by Plaintiffs' frequent use of terms such as "torture" and "genocide."

The lack of substance of Plaintiffs' federal claims is clearly demonstrated by an examination of the Complaint. In Count I, Plaintiffs allege such torts as assault, battery and false imprisonment. J.A. Vol. I, at 21a. The remaining Counts do not contain allegations of any different acts by defendants. Rather, Plaintiffs repeat the same allegations but use different labels to describe the substantive law. However, this does not mean that Plaintiff's right to recover involves federal laws or treaties in any manner, much less the "pivotol," "substantial" and "direct" involvement required under applicable case law. Plaintiffs' right to recover rests on only one thing: factual support for the bald allegations that the NAAA did, in fact, commit the acts asserted.

The foregoing constitutes a sufficient basis for the District Court's rejection of Section 1331 jurisdiction. There is, however, further reason that such jurisdiction cannot be sustained: neither the treaties cited by Plain-

tiffs nor the law of nations provides any basis for the private cause of action which Plaintiffs assert against the NAAA.

Section 1331 requires that claims *arise under* United States treaties or under the law of nations which is part of the federal common law. However, many of the so-called "treaties" cited by Plaintiffs are not, in fact, treaties at all. Indeed, eight of the thirteen "treaties" are not presently treaty obligations of the United States, as documented by the United States Department of State in its annual publication entitled *Treaties In Force.*[23] Accordingly, no Section 1331 jurisdiction can arise from these defective allegations.

Further, the actual treaties[24] cited by Plaintiffs do not provide any judicially enforceable rights. A treaty is a contract between the United States and other signatories of the treaty. When ratified, a treaty becomes the law of the United States, and, as such, *may* confer rights capable of judicial enforcement. However, the general rule is that treaties do not confer any privately enforce-

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[23] The "treaties" which are not, in fact, U.S. treaty obligations are those set forth in paragraphs 110, 112-115 and 117-119 of the Complaint. *See* J.A. Vol. I, at 27a-29a, 129a-130a, 132a-136a; Department of State, Treaties Affairs Staff, Office of the Legal Advisor, *Treaties In Force* (Publication 9136) (1980).

[24] The law of nations as part of the federal common law is not separately addressed herein, insofar as Section 1331 jurisdiction is concerned. Every "treaty" cited by Plaintiffs in Count III of the Complaint is also listed under Count II concerning the law of nations. There are 10 alleged laws of nations that are not also listed as treaties, but each is redundant of the treaties which are discussed. *See* J.A. Vol. I, at 22a-29a. Clearly, if a treaty provides Plaintiffs no cause of action, calling it part of the law of nations does not provide a cause of action either.

able rights and thus are deemed to be "executory" with respect to the rights of private individuals. Accordingly, except where a treaty is self-executing (and this is generally *not* the rule), Congress must implement the treaty though legislation before the treaty gives rise to a private right of action. *E.g., Mannington Mills, Inc. v. Congoleum Corp.,* 595 F.2d 1287, 1298 (3d Cir. 1979); *Diggs v. Richardson,* 555 F.2d 848, 850-51; *Dreyfus v. von Finck,* 534 F.2d 24, 29-30; *Chapalain Compagnie v. Standard Oil Co. (Indiana),* 467 F. Supp. 181, 184.

There is no precise rule for determining whether a particular treaty constitutes an exceptional case such that it is self-executing and provides a person with privately enforceable rights for its violation. However, there are certain interpretive guides which courts rely upon to determine whether a treaty is executory or self-executing. First, if a treaty calls for each country to enact legislation concerning the treaty, it universally is held to be executory and thus no private rights are conferred by it. *See United States v. Postal,* 589 F.2d 862, 876-77 (5th Cir.), *cert. denied,* 444 U.S. 832 (1979).

Second, courts look to the words of a treaty to determine whether it evidences an intent to confer judicially enforceable rights upon individuals or whether it addresses governmental actions. For example, in *Diggs v. Richardson,* 555 F.2d 848, this Court considered whether a United Nations resolution calling for nations to abstain from trade and other contacts with Namibia and South Africa gave rise to an implied right of action. The resolution stated that such contacts might "entrench" white authority over those areas. *Id.* at 849. The court found the resolution executory:

> [W]e find that the provisions here in issue were not addressed to the judicial branch of our government. They do not by their terms confer rights upon individual citizens; they call upon government to take certain action. The provisions deal with the conduct of our foreign relations, an area traditionally left to executive discretion . . . . The Resolution does not provide specific standards. The 'entrenchment' standard of the Resolution, while possibly of such a nature that it might be elaborated by an international tribunal, is essentially the kind of standard that is rooted in diplomacy and its incidents, rather than in conventional adjudication, and is foreign to the general experience and function of American courts. In the absence of contrary indication in the international legislative history, and in the absence of domestic legislation evincing an intention for judicial enforcement, we conclude that the provisions of Resolution 301 involved here do not confer on individual citizens rights that are judicially enforceable in American domestic courts.

555 F.2d at 851 (footnotes deleted). Similarly, in *Sei Fujii v. State*, 38 Cal. 2d 718, 242 P.2d 617 (1952), the California Supreme Court stated:

> In order for a treaty provision to be operative without the aid of implementing legislation and to have the force and effect of a statute, it must appear that the framers of the treaty intended to prescribe a rule that, standing alone, would be enforceable in the courts

38 Cal. 2d at 721-22; 242 P.2d at 620.[25]

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[25] The approach in *Diggs v. Richardson* and *Sei Fujii v. State*, in focusing on the intention manifested in the treaty, is similar to that of the Supreme Court in recent cases regarding whether an implied right of action arises under various federal statutes. *See e.g., Touche Ross & Co. v. Redington*, 442 U.S. 560 (1979); *Cort v. Ash*, 422 U.S. 66 (1975). Accordingly, under *Diggs*, *Sei Fujii*, and these Supreme Court

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The NAAA demonstrated in detail to the District Court that none of the "treaties" alleged by Plaintiffs to provide a cause of action arising under federal laws in fact provided such a cause of action. *See* J.A. Vol. I, at 132a-136a.[26] The District Court also examined these treaties and reached the same conclusion. J.A. Vol. II, at 124a-129a. Plaintiffs have failed on appeal to demonstrate any basis to set aside the District Court's holding.

For instance, Plaintiffs make the following argument regarding the Geneva Convention Relative to the Protection of Civilian Persons in Time of War.

> An examination of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, indicates that its essential purpose is directed to protecting the rights of persons who are civilians. It confers individual rights on such persons. It describes in detail that these individuals are to be free from acts of torture, terror, hostage-taking and genocide. The rights given to individuals are clear, enforceable and unmistakable. They are enforceable in United States courts without the enactment of any new legislation and without the Congress providing any additional funds.

Plaintiffs' Brief, p. 41. However, it is *not* enough simply to *allege* that the Convention confers rights which are en-

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decisions, it is appropriate for this Court to inquire whether the treates in question manifest a clear intention that private rights be created and whether, if so, plaintiffs are within that special class of persons intended to be protected by the treaty. Since plaintiffs cannot demonstrate that the treaties were designed to provide a private right of action to any person, their reliance on these treaties for federal jurisdiction cannot be sustained.

[26] The portions of the treaties cited by Plaintiffs in the Complaint are found in the Joint Appendix, Vol. I, at 164a-286a.

forceable. Rather, it is the language of the Convention which must be examined to discern whether a cause of action may be inferred. When the Convention is examined, it is clear that Article 146 specifically calls for nations to enact implementing legislation. J.A. Vol. 1, at 169a. This is a clear indication that the treaty is executory and provides no cause of action to Plaintiffs without Congressional action. *See United States v. Postal,* 589 F.2d 862.

In conclusion, Plaintiffs have failed to demonstrate that any treaty or the law of nations provides a private cause of action for their grievances. They further fail to demonstrate that federal law will be substantially implicated in resolution of these claims. Accordingly, Section 1331 provides no jurisdiction.

III. The District Court was Correct in Ruling that Plaintiffs' Claims are Barred by the Statute of Limitations

In addition to dismissing the Complaint for lack of subject matter jurisdiction, the District Court also ruled that dismissal was required due to expiration of the applicable statute of limitations. J.A. Vol. II, at 133a-134a. This Court should affirm this action.

The District Court ruled (and Plaintiffs do not disagree) that D.C. Code § 12-301 provides the applicable statute of limitations. J.A. Vol. II, at 133a.[27] Section 12-301

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[27] The District Court was unquestionably correct in applying D.C. Code § 12-301. Under the principles of *Erie R.R. v. Thompkins,* 304 U.S. 64 (1938), as applied to the federal courts in the District of Columbia, the District Court looked

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specifies a one-year limitation period "for libel, slander, assault, battery, mayhem, wounding, malicious prosecution, false arrest or false imprisonment . . . ." D.C. Code § 12-301(4). Section 12-301(8) provides a 3-year limitations period for causes of action "for which a limitation is not otherwise specially prescribed . . . ."

The District Court ruled that Plaintiffs' claims, *in substance,* constituted intentional torts of the kind delineated in D.C. Code § 12-301(4). Indeed, Plaintiffs specifically alleged assault, battery, and false imprisonment under each Count of the Complaint.[28] Accordingly, the District Court ruled that all Plaintiffs' claims were barred by the applicable one-year limitations period. J.A. Vol. II, at 133a-134a.

The NAAA submits that the District Court was clearly correct in applying the one-year limitations period to all of Plaintiffs' intentional tort claims. Count I purports to assert a cause of action based on "the *intentional* torts of assault, battery, false imprisonment, intentional infliction

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to District of Columbia law to determine which statute of limitations to apply to Plaintiffs' claims. *Steorts v. American Airlines, Inc.*, 647 F.2d 194 (D.C. Cir. 1981). *See also Lee v. Flintkote Co.*, 593 F.2d 1275 (D.C. Cir. 1979). It is established under District of Columbia law that "a limitation on the time of [bringing a] suit is procedural and is governed by the law of the forum." *Kaplan v. Manhattan Life Ins. Co.*, 109 F.2d 463, 465-66 (D.C. Cir. 1939); *accord, Hodge v. Southern Ry.*, 415 A.2d 543 (D.C. 1980); *May Department Stores Co., Inc. v. Devercelli*, 314 A.2d 767 (D.C. 1973). Since a District of Columbia court would apply its own statute of limitations to an action before it, regardless of where the cause of action might have arisen, it is clear that the District Court similarly was required to apply the D.C. statute of limitations to Plaintiffs' claims. *Steorts v. American Airlines, Inc.*, 647 F.2d 194.

[28] J.A. Vol. I, at 21a, 22a, 27a, 29a-30a, 32a.

of mental distress and/or intentional infliction of cruel, inhuman and degrading treatment...." J.A. Vol. I, at 22a (emphasis supplied). The allegedly tortious acts are described by Plaintiffs as follows:

> The defendants tortured, terrorized, humiliated, wounded, injured, held hostage, threatened, inflicted mental distress upon, assaulted and battered the plaintiffs and otherwise subjected the plaintiffs to cruel, inhuman and degrading treatment.

J.A. Vol. I, at 21a. It is beyond dispute that Plaintiffs' claims for assault, battery and false imprisonment are time-barred by the one-year limitations period of Section 12-301(4). Plaintiffs' remaining claims are similarly barred. The allegations that Plaintiffs denominate as "causes of action" for the additional so-called "intentional torts" of "infliction of mental distress" and "infliction of cruel, inhuman and degrading treatment," do not state separate or distinct rights of action. Indeed, Plaintiffs do not even purport to allege any facts to support the independent existence of these so-called "causes of action." Instead, these "causes of action" clearly arise out of the same conduct which allegedly constitutes the assault, battery, and false imprisonment. Thus, in Count I, Plaintiffs have done no more than assign two additional labels to the conduct.[29]

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[29] Assuming for the sake of argument that the law of the District of Columbia would recognize independent causes of action for the so-called torts of infliction of mental distress and infliction of cruel, inhuman and degrading treatment, no such torts are properly pleaded in the Complaint. The infliction of mental distress and of cruel, inhuman and degrading treatment, as pleaded by Plaintiffs in Count I, are obviously nothing more than supplemental descriptions of conduct which is fully encompassed by the traditional common law intentional torts of assault, battery, and false imprisonment.

The District Court properly rejected Plaintiffs' attempt to circumvent the one-year statute of limitations in their Count I allegations. Congress clearly intended Section 12-301(4) to apply to all intentional torts of the type asserted in Count I. The mere fact that Plaintiffs came up with new words to describe the traditional terms chosen by Congress in drafting the statute does not change the *substance* or the *nature* of the claims asserted by Plaintiffs in Count I.[30]

It is well established that "the label which a plaintiff applies to a pleading does not determine the nature of the cause of action which he states." *Aktiebolaget Bofors v. United States,* 194 F.2d 145, 148 (D.C. Cir. 1951). *Accord, Johnson v. United States,* 547 F.2d 688 (D.C. Cir. 1976); *Blitz v. Boog,* 328 F.2d 596, 599 (2d Cir.), *cert. denied,* 379 U.S. 855 (1964) ("It is, of course, the substance of the claim, and not the language used in stating it, that controls.") *Universal Airline v. Eastern Air Lines,* 188 F.2d 993 (D.C. Cir. 1951); *Hendry v. United States,* 280 F. Supp. 27 (S.D.N.Y. 1968), *aff'd,* 418 F.2d 774 (2d Cir. 1969).

Furthermore, as this Court held in ruling that the *nature* of a claim determines which statute of limitations

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30 Plaintiffs' argument would clearly raise form over substance. The courts have long recognized that statutes must be read flexibly to accomplish their intended purpose and in a manner which recognizes the evolving nature of the law. *See Filartiga v. Pena-Irala,* 630 F.2d 876, 881 (courts must interpret international law not as it was in 1789 when Section 1350 was enacted but as it exists today). The clear purpose of Section 12-301(4) was to specify a uniform one-year limitations period for all intentional torts involving violence. Plaintiffs' interpretaton, however, would require continued Congressional amendment in the face of an evolving law of torts in order for Congress to accomplish its purposes. Such an unyielding interpretation of the law is improper.

applies, "the statute of limitations . . . . cannot be evaded by referring to [a] cause of action in some other terms." *Universal Airline v. Eastern Air Lines,* 188 F.2d at 996. Thus, because Count I, in substance, alleges nothing more than claims for the intentional torts covered by Section 12-301(4), the one-year limitations period of that statute must be applied.

Similarly, Counts II, III, and V of the Complaint are also barred by Section 12-301(4).[31] In Counts II and III, Plaintiffs merely restate the substantive allegations of Count I and then supply yet another set of labels to those intentional tort claims. Count V, which also repeats the same Count I substantive allegations, purports to state a claim for conspiracy to commit the torts alleged in Counts I through IV. J.A. Vol. I, at 21a, 22a, 27a, 29a-30a, 32a.

As noted above, a court must examine the *substance* of a party's claims to determine which statute of limitations to apply. The substance of the Count II, III, and V claims is clearly identical to that of the claims in Count I—intentional torts. Like Count I, therefore, Counts II, III and V are subject to the one-year limitations period of D.C. Code § 12-301(4) and, accordingly, they are time-barred and were properly dismissed.

Plaintiffs' nevertheless attempt to evade the rule that courts look to the *substance* of Plaintiffs' claims, rather than the labels, in determining the applicable limitation period. Thus, before this Court, Plaintiffs urge that the

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[31] Plaintiffs have not contested the Court's ruling that Count IV is barred by the statute of limitations. *See* Plaintiffs' Brief, p. 45. The analysis which follows, however, would apply equally to Count IV.

"torts" of intentional infliction of emotional distress and intentional infliction of cruel, inhumane and degrading treatment are "distinct" from the other enumerated torts and thus must be governed by a three-year limitation period. Plaintiffs' Brief, pp. 43-44. Plaintiffs make the same basic argument regarding Counts II, III and V:

> These tort claims [alleged violation of the law of nations and treaties and alleged conspiracy] are different from the common law tort claims asserted in Count I because the legally protected interests at stake and the nature and purpose of the tortious conduct at issue are different.

Id. at 46.

This Court must reject this argument. As previously noted, the same conduct is at issue in all Counts of the Complaint. Thus, while the labels are different, the *substance* is exactly the same. Moreover, Plaintiffs themselves have alleged that the cause of action they are pursuing arises under so-called "municipal law," not under the law of nations or other international law. Plaintiffs' Brief at 25. In arising under such municipal law, its *substance* is in fact identical to the other "municipal" claims, such as assault and battery which clearly are time barred.

Plaintiffs also urge that important federal policies would be thwarted if this Court applied a one-year limitation period to Counts II, III and V.

> In ratifying the treaties and enacting the statutes relied upon herein, including 28 U.S.C. § 1350, it is reasonable to infer that Congress did not intend that the exercise of the federal rights thereby created was to be burdened by an unreasonably short state statute of limitations.

Plaintiff's Brief, p. 48. The District Court properly rejected this claim. J.A. Vol. II, at 134a. It is pure, unsupported speculation to infer as Plaintiffs suggest, that Congress, in enacting Section 1350 in 1789 or the various treaties and other laws cited by Plaintiffs, wanted to be sure that a longer limitations period applied. Rather, the policy of Congress has been expressed in D.C. Code § 12-301, as interpreted by the courts. That policy is that there shall be prompt resolution of intentional tort claims involving violence, regardless of the label which is applied. Plaintiffs now, in fact, seek to thwart that policy by arguing, in essence, that certain of the Count I common law claims are properly barred but that the so-called "federal" claims of Counts II, III and V—claims which involve the precise same conduct as Count I—are not barred. This is manifestly inconsistent with Section 12-301 and inconsistent with the stated policy of narrowly construing 28 U.S.C. § 1350. *See IIT v. Vencap Ltd.*, 519 F.2d 1001, 1015.

Finally, Plaintiffs' frequent use of emotional code words such as "torture," "genocide," and "terrorism" in describing the tortious acts complained of, as well as their ceaseless incantation of the "law of nations," should not distract this Court from the required analysis of the *substance* of Plaintiffs' claims. This is not meant to imply that Plaintiffs' injuries or suffering were necessarily any less than as alleged in the Complaint; merely that fear is fear, pain is pain, and injury is injury, regardless of where, by whom, or for what reasons it may have been inflicted. In enacting Section 12-301(4), Congress plainly intended to prohibit persons from sitting on known causes of action—those arising from intentional torts—by requiring such ac-

tions to be brought within a year. Plaintiffs' claims are therefore time-barred.

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CONCLUSION

For the foregoing reasons, the NAAA respectfully urges this Court to affirm the District Court's dismissal of these actions.

Respectfully submitted,

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Dated: December 21, 1981
Washington, D. C.